141-627

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 698. ~~265~~ 64

THE WILLCOX AND GIBBS SEWING MACHINE COMPANY,
PLAINTIFF IN ERROR,

vs.

DANIEL S. EWING.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JULY 23, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JANUARY 25, 1890.

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1 UNITED STATES, }
Eastern District of Pennsylvania, } *sct:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between Daniel S. Ewing, plaintiff, and The Willcox and Gibbs Sewing Machine Company, defendant, in a plea of trespass on the case, a manifest error has intervened to the great damage of the said The Willcox and Gibbs Sewing Machine Company, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States, at Philadelphia, this 29th day of June, A. D. one thousand eight hundred and eighty-eight, and in the one hundred and twelfth year of the Independence of the said United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To Daniel S. Ewing, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein The Willcox and Gibbs Sewing Machine Company — plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 3rd day of July, in the year of our Lord one thousand eight hundred and eighty-eight.

WM. BUTLER, *Judge.*

I accept service of the above citation.

JOHN G. JOHNSON,
Per F. P. PRICHARD,
Att'y for D. S. Ewing.

3 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

DANIEL S. EWING
vs.
THE WILCOX AND GIBBS SEWING MACHINE COMPANY. } No. 17. October Session, 1886.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1886, No. 17.

It is thus contained:

Be it remembered that on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and eighty-six, Hon. Wayne MacVeagh, attorney for The Wilcox and Gibbs Sewing Machine Company, defendant, comes into court here and
4 files an exemplification of the record and proceeding of the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania, in the words and figures following, to wit:

5 *Exemplification.*

PHILADELPHIA COUNTY,
State of Pennsylvania, } *sct:*

Among the records and proceedings of the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 70 of Dec'r term, 1880, to wit:

Docket entries, December term, 1880:

J. G. Johnson, 70, Thorn, 11, 12, '80.

Daniel S. Ewing *vs.* The Wilcox and Gibbs Sewing Machine Company.

Dec. 9, 1880.—Rule on pl'ff to declare filed.

Aug't 10, 1886.—*Narr.* & rule to plead filed.

Aug't 16, 1886.—Pleas filed.

Aug't 21, 1886.—Replication filed.

Sum's case—exit Nov. 9, 1880; ret. 1st Mon., Dec., 1880—served.

Sept. 4, 1886.—Petition for removal of cause to circuit court of the U. S.

Eo die.—Bond filed.

6 C. P. No. 2. S. '80.

DANIEL S. EWING
vs.
THE WILCOX AND GIBBS SEWING MACHINE COMPANY. } No. —.

Issue summons case as above, returnable first Monday of December next.

JOHN G. JOHNSON, *For Pl'ff.*

Nov. 9, '80.

(Endorsed:) 70. Dec. T., 1880. C. P. No. 2. Ewing *vs.* Sewing Machine Co. Præcipe summons. Filed Nov. 9, '80. John G. Johnson, *pro* pl'ff.

7 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you summon the Wilcox and Gibbs Sewing Machine Company, late of your county, so that they be and appear before our judges, at Philadelphia, at our court of common pleas No. 2 of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of December next, there to answer Daniel S. Ewing of a plea of trespass on the case, etc.; and have you then and there this writ.

Witness the Honorable J. I. Clark Hare, president judge of our said court, at Philadelphia, the 9th day of November, in the year of our Lord one thousand eight hundred and eighty.

WM. MACCAIN,
Pro Prothonotary.

8 [Endorsed:] 70. Dec. term, 1880. Court of common pleas No. 2. Daniel S. Ewing *vs.* The Wilcox and Gibbs Sewing Machine Company. Summons case. John G. Johnson.

Served the Wilcox and Gibbs Sewing Machine Company by giving, November 10, 1880, a true and attested copy of the within writ to H. L. Dean, agent of said company, and making known to him the contents thereof.

So answers—

THOS. H. STOKLEY,
Deputy Sheriff.
ENOCH TAYLOR, *Sheriff.*

9 C. P. No. 2. Dec. T., 1880.

EWING
vs.
WILCOX & GIBBS S. M. Co. } No. 70.

Enter my appearance for the defendant in the above case.

THORN, *For Def'd't.*
Per B.

Nov. 12, '80.

To pro. C. P.

(Endorsed:) 70. Dec. T., 1880. Ewing *vs.* Wilcox & Gibbs S. M. Co. C. P. No. 2. Order for appearance for def'd't. Filed Nov. 12, '80. Thorn.

10 C. P. No. 2. Dec. T., 1880.

EWING
vs.
SEWING MACHINE Co. } No. 70.

Enter rule on plaintiff to declare in eight days or judg't *sec. reg.*

THORN,
Per S. G.,
Att'y for Def't.

Dec. 9, 1880,

To pro. C. P.

(Endorsed:) 70. Dec. T., 1880. C. P. No. 2. Ewing *vs.* Sewing Machine Co. Rule on plaintiff to declare in 8 days or judg't *sec. reg.* Filed Dec. 9, '80. Thorn.

11 In the Court of Common Pleas No. 2 for the County of Philadelphia, of December Term, 1880, No. 70.

COUNTY OF PHILADELPHIA, *ss:*

The Wilcox and Gibbs Sewing Machine Company were summoned to answer Daniel S. Ewing of a plea of trespass on the case, &c., whereupon the said Daniel S. Ewing, by John G. Johnson, his attorney, complains for that whereas heretofore, to wit, on the fifteenth day of October, A. D. one thousand eight hundred and seventy-four, by an agreement then and there made between the plaintiff and the defendant, it was agreed that the defendant thereby appointed, subject to conditions thereinafter expressed, the plaintiff its exclusive vendor for its sewing machines, parts and attachments, in and for the following-named territory, to wit, the city of Philadelphia, Pa., and the adjacent country lying within a radius of ten miles from the city hall of said city; that the plaintiff thereby accepted said appointment; that the defendant would sell for the present to the plaintiff its sewing-

machines and parts thereof at sixty per cent. discount from its then present New York retail price-list, and its needles, attachments, silk, and cotton at its lowest wholesale rates; that in
12 the event of a change (the liberty to effect which was not therein intended to be restricted) in retail prices or of a general revision of discounts by defendant the plaintiff was to be as favorably considered then in the readjusting and fixing of discount rates to him as was extended to him on the then present basis of prices; that all bills owing from plaintiff to defendant should be paid in cash thirty days from date of same; that the defendant would not knowingly supply its goods at a discount to go within the limits or territory thereby assigned, but the defendant reserved the right always to sell its sewing-machines, parts and accessories, at full retail rates to go anywhere; that the established retail prices of defendant were to be maintained for retail trade, and plaintiff was bound to sustain them, and would bind all subvendors or agents of his to sustain said established retail prices; that the plaintiff would be allowed to fill orders from any locality at full list rates, but that trade must not be solicited by his connivance or consent in the territory of other agents, and that discounts or any equivalent device therefor must not be allowed in any form on articles therein specified permitted to go out of his own territory; that machines or parts, needles, or attachments counterfeiting, infringing, or in any degree trespassing upon defendant's name must not be dealt
13 in nor countenanced by plaintiff, but it was thereby agreed that plaintiff's time, attention, and abilities must primarily be devoted to the forwarding of the interest of defendant; that if for any reason at any time the connection thereby formed should cease the defendant should have the right to buy back of its goods sold to plaintiff all such goods as defendant might select, defendant to pay therefor the same prices as charged plaintiff; that plaintiff agreed to purchase from defendant during the year 1875 at least twenty thousand dollars' net worth of machines, parts and accessories, to be taken in equal monthly parts and to be paid for as stated therein; that violation of the spirit of said agreement should be sufficient cause for the abrogation; that permission was granted plaintiff to trade in all former territory occupied by him until such time as defendant should form other connections for occupying the territory not contained in that designated therein as belonging to defendant; and it was agreed and understood that said appointment of agency was not salable or transferable by plaintiff without obtaining the written consent of defendant, but such consent was to be given providing the purchaser or other persons was acceptable to said defendant; that defendant consented to renew and extend plaintiff's note for ten thousand dollars, maturing January 23–26, 1875, for one year from said date, without interest, upon consideration of said agreement alone, and that all contracts or agree-
14 ments made prior to said date of fifteenth day of October, A. D. one thousand eight hundred and seventy-four, were thereby nullified and satisfied.

And the said agreement being so made, thereupon afterwards, to

wit, on the fifteenth day of October, A. D. one thousand eight hundred and seventy-four, in consideration thereof and that the plaintiff, at the request of the defendant, had then undertaken and promised the defendant to perform and fulfill the said agreement in all things on the plaintiff's part, the defendant undertook and then promised the plaintiff to perform the said agreement in all things on the defendant's part.

And the said plaintiff further says that, although confiding in the said promise and undertaking of the defendant, he, the said plaintiff, did, to wit, on the day and year last aforesaid, enter upon the business of selling the sewing-machines and attachments in said agreement mentioned as the exclusive vendor of the same in the territory aforesaid and expended a large sum of money, to wit, the sum of fifty thousand dollars, and entered into divers contracts and agreements in the renting of a place of business, the purchase of machines and attachments from defendant, and the development of the said business, and although the said plaintiff hath in all things conformed himself to and performed and observed all and
15 singular the articles, stipulations, matters, and things in the said agreement which on his part were to be performed and observed according to the tenor and effect, true intent and meaning of the said agreement, yet the said plaintiff in fact says that the said defendant did not nor would not continue the plaintiff as the exclusive vendor for its sewing-machines, parts, and attachments within the territory aforesaid nor sell to plaintiff its sewing-machines and parts thereof at the prices stipulated for in said agreement as aforesaid, but, on the contrary thereof, afterwards, to wit, on the tenth day of October, A. D. one thousand eight hundred and seventy-nine, refused to allow said plaintiff to continue as such exclusive vendor and to sell said plaintiff its sewing-machines and attachments at the prices aforesaid and did afterwards, to wit, on the day and year aforesaid and from thence hitherto hath sold its machines and attachments to other dealers within the aforesaid territory of the city of Philadelphia and the adjacent country lying within a radius of ten miles from the City Hall of said city; by means whereof the plaintiff hath lost and been deprived of the benefit and advantage which he would otherwise have derived from his large expenditures of money in the prosecution of said business as aforesaid and from the contracts and agreements entered into by him as aforesaid and hath been forced to expend a large sum of money, to wit, the sum of fifty thousand dollars,
16 to the fulfilment of the contracts and agreements entered into upon the faith of the performance by defendant of its said agreement, and hath also been deprived of large sums of money, amounting in all to a large sum of money, to wit, the sum of fifty thousand dollars, which he would have received from the sales of machines and attachments and other materials in said agreement mentioned, within the territory aforesaid since the said refusal of the said defendant, to wit, since the tenth day of October, A. D. one thousand eight hundred and seventy-nine, and has also lost and been deprived of a large sum of money, to wit, the sum of fifty thou-

sand dollars, which he would otherwise have received since the day and year last aforesaid, as profits on the sale within the territory aforesaid of a large quantity of machines, attachments, and materials in said agreement mentioned, amounting in value to a large sum, to wit, to the sum of one hundred thousand dollars, and has also been deprived of and lost the good-will and value of the said business of exclusive vendor of defendant's machines and attachments within the territory aforesaid, to wit, the sum of fifty thousand dollars, and hath otherwise been greatly injured and damnified, to the damage of the plaintiff fifty thousand dollars; and therefore he brings his suit.

JOHN G. JOHNSON,
Per F. P. P., *Att'y for Pl'ff.*

17 (Endorsed:) 70. Dec. term, 1880. C. P. No. 2. Ewing *vs.* Wilcox & Gibbs Sewing Mach. Co. Filed Aug. 10, 1886. J. Briggs. Narr. Enter rule to plead in eight days or judg't sec. reg. John G. Johnson, per F. P. P., att'y for pl'ff. To proth'y, C. P.

18 Common Pleas No. 2. December Term, 1880.

DANIEL S. EWING
vs.
WILCOX & GIBBS SEWING MACHINE COMPANY. } No. 70.

The defendant pleads non-assumpsit, payment, and payment with leave.

WAYNE MACVEAGH,
Defendant's Attorney.

August 16th, 1886.
To William B. Mann, Esq., prothonotary.

(Endorsed:) 70. Dec. term, 1880. C. P. 2. Daniel S. Ewing *vs.* Wilcox & Gibbs Machine Co. Pleas. Filed Aug. 16, 1886. J. Briggs. MacVeagh.

19 C. P. 2. Dec. T., 1880.

EWING
vs.
WILCOX & GIBBS S. M. Co. } 70.

Plaintiff replies *non solvit* and issue.

JOHN G. JOHNSON,
Per F. P. P., *Att'y for Pl'ff.*

(Endorsed:) 70. Dec'r T., 1880. C. P. 2. Ewing *vs.* Wilcox & Gibbs S. M. Co. Replication. Filed Aug't 21, 1886. J. Briggs, pro proth'y. J. G. Johnson, pro pl'ff.

20 In the Court of Common Pleas, No. 2, of Philadelphia County. Dec. Term, 1880.

DANIEL S. EWING
vs.
THE WILCOX AND GIBBS SEWING MACHINE COMPANY. } No. 70.

The petition of the Wilcox and Gibbs Sewing Machine Company respectfully showeth as follows:

1. Your petitioner is the defendant in the above-entitled cause. The said cause was begun in the court of common pleas, No. 2, of Philadelphia county, in the State of Pennsylvania, by a summons duly served upon the proper officers of the defendant company.

2. Your petitioner was, at the time of the beginning of this suit and still is, a citizen of the State of New York, and was not, at the time of the beginning of this suit nor has it since been, a citizen of the State of Pennsylvania.

3. The plaintiff in this cause, the said Daniel S. Ewing, was at the time of the beginning of this suit and still is a citizen of the State of Pennsylvania.

4. The matter in controversy in the said action, your petitioner is informed and believes and so avers, exceeds the sum of five hundred dollars, exclusive of costs.

21 5. Your petitioner is desirous of removing the said cause into the circuit court of the United States for the eastern district of Pennsylvania for the third circuit, and offers security to this court for its entering in the said circuit court of the United States for the eastern district of Pennsylvania, on or before the first day of the next session thereof, a copy of the record in said suit and for paying all costs that may be awarded by the said circuit court if the said court shall hold the said cause was wrongfully or improperly removed thereto.

Wherefore your petitioner prays this court to accept its said petition and bond, in order that your petitioner may proceed to remove the said suit in the said circuit court of the United States.

WILCOX & GIBBS S. M. Co.
J. P. ARMLY, *Treas.* [SEAL.]

STATE OF NEW YORK, }
County of New York, City of New York, } *ss:*

Jahial P. Armly, being duly sworn according to law, deposes and says that he is the treasurer of the Wilcox and Gibbs Sewing Machine Company, and that the facts set forth in the foregoing petition, so far as the same are stated of his own knowledge, are known
22 by him to be true, and so far as the same are stated on information and belief are believed by him to be true.

J. P. ARMLY.

Sworn and subscribed to before me this 18th day of June, A. D. 1885.

R. S. HAYWARD,
[SEAL.] *Notary Public*, 38, *N. Y. Co.*

(Endorsed:) 70. Dec. T., 1880. C. P. 2. Ewing *vs.* Wilcox and Gibbs S. M. Co. Petition to remove. Filed Sep. 4, 1886. Jas. W. Fletcher, pro proth'y. MacVeagh.

23 Know all men by these presents that we, The Wilcox and Gibbs Sewing Machine Company and Lemuel Coffin, are held and firmly bound unto Daniel S. Ewing in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Daniel S. Ewing, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we do bind ourselves, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated the nineteenth day of June, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas there is pending in the court of common pleas, No. 2, of Philadelphia county, State of Pennsylvania, to December term, 1880, No. 70, a certain issue, wherein the said Wilcox and Gibbs Sewing Machine Company is defendant and the said Daniel S. Ewing is plaintiff; and whereas the said defendant is about to present its petition to remove the said cause to the United States circuit court for the eastern district of Pennsylvania under the act of Congress in such cases made and provided:

Now, the condition of this obligation is such that if the above-bounden, The Wilcox and Gibbs Sewing Machine Company,
24 shall enter in the said circuit court on or before the first day of the next session thereof, to wit, on or before the first Monday in October, 1885, a copy of the record of the said issue and shall pay all costs that may be awarded by the said circuit court if the said court shall hold that such proceedings were wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain and be in full force and virtue.

WILCOX & GIBBS S. M. CO.
J. P. ARMLY, *Treas.* [SEAL.]
LEMUEL COFFIN. [SEAL.]

Sealed and delivered in the presence of—
S. A. SMART.
A. W. WINTERSTEEN.

Approved.
D. N. F.

Sept. 4, 1886.

(Endorsed:) 70. Dec. T., 1880. C. P. 2. Ewing *vs.* Wilcox and Gibbs S. M. Co. Bond. Filed Sept. 4, 1886. Jas. W. Fletcher, pro proth'y.

25 COMMONWEALTH OF PENNSYLVANIA, } ss:
Philadelphia County, }

I, Wm. B. Mann, prothonotary of the court of common pleas, No. two, in and for said county, certify that the foregoing is a full and correct copy of the whole record of the case herein stated, wherein Daniel S. Ewing is plaintiff and The Wilcox and Gibbs Sewing Machine Company is defendant, as the same remains of record before the said court at No. 70 of December term, A. D. 1880.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of the said court the 24th day of Sept'r, A. D. 1886.

EUGENE J. LINDSAY,
Pro Prothonotary.

26 (Endorsed:) No. 17. Oct. sess., 1886. Circuit court U. S., eastern dist. of Pa. Ewing *vs.* Wilcox and Gibbs Sewing Machine Co. Exemplification of record. Filed 25 Sep., 1886. John A. Merrick, pro clerk.

27 And afterwards, to wit, on the 30th day of September, A. D. 1886, the parties, by their attorneys, come into court here and file the following agreement to withdraw pleas and replication, viz:

28 C. C. U. S., Eastern District of Pa.

DANIEL S. EWING
vs.
WILLCOX & GIBBS SEWING MACHINE COMPANY. } No. 17.

It is agreed that the pleas filed in this cause may be withdrawn by the defendant, and the replication filed be withdrawn by the plaintiff.

JOHN G. JOHNSON,
For Plaintiff.
WAYNE MACVEAGH,
For Defendant.

(Endorsed:) C. C. U. S., E. D. of Pa. Oct. sess., '86. No. 17. Ewing *vs.* Willcox and Gibbs Sewing Machine Co. Agreement to withdraw pleas and replication. Filed 30 Sep., 1886. W. von A. Williamson, pro clerk.

29 And afterwards, to wit, on the 1st day of June, A. D. 1887, the defendants, by its attorney, comes into court here and files its plea in the words and figures following:

Circuit Court, E. D. of Penna. October sessions, 1886.

DANIEL S. EWING
vs.
WILCOX & GIBBS SEWING MACHING COMPANY. } No. 17.

The defendant pleads non-assumpsit, payment, and payment with leave.

WAYNE MACVEAGH,
Defendant's Attorney.

June 1st, 1887.

To Samuel Bell, Esq., clerk circuit court, E. D. of Penna.

30 (Endorsed:) C. c't, E. D. of Penn'a. No. 17. October sessions, 1886. Ewing *vs.* Wilcox & Gibbs Sewing Machine Company. Plea. Filed 1 Jun., 1887. Samuel Bell, clerk. MacVeagh.

31 And afterwards, to wit, on the 3rd day of June, A. D. 1887, the plaintiff, by his attorney, comes into court here and files his replication in the words and figures following:

32 U. S. C. C., E. D. Pa. Oct. Sess., 1886.

EWING
vs.
WILCOX & GIBBS S'W'G MACH. CO. } No. 17.

Plaintiff replies *non solvit* and issue.

JOHN G. JOHNSON,
Per F. P. P., *Att'y for Pl'ff.*

To clerk C. C.

(Endorsed:) 17. Oct. sess., 1886. U. S. C. C., E. D. Pa. Ewing *vs.* Wilcox & Gibbs S'w'g Mach. Co. Replication. Filed 3 Jun., 1887. Samuel Bell, clerk. J. G. Johnson.

33 And thereupon it is ordered that a jury come to try the issue joined in this cause.

And afterwards, to wit, on the 13th day of April, A. D. 1888, come the parties aforesaid, and the jurors of the jury aforesaid, being called, likewise come, to wit, Ellsworth H. Hults, Edward H. Twaddell, Charles Shoemaker, William M. Runk, William Burton, Charles H. Lungren, Joseph W. Lewis, Robert P. Morton, Peter C. Ellmaker, William F. Riddle, William Burnham, Daniel S. Lindsay, who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this case.

And afterwards, to wit, on the 18th day of April, A. D. 1888, the urors aforesaid, upon their oaths or affirmations aforesaid, respect-

ively do say that they find for the plaintiff and assess the damages at fifteen thousand one hundred dollars ($15,100).

34 And afterwards, to wit, on the 20th day of April, A. D. 1888, the defendant, by its attorney, comes into court here and moves for judgment for defendant *non obstante veredicto* on the points reserved in the words and figures following:

35 C. C. U. S. October Sessions, 1886.

DANIEL S. EWING
vs.
WILLCOX AND GIBBS SEWING MACHINE COMPANY. } No. 17.

And now, April 20th, 1888, MacVeagh, for defendant, moves for judgment for defendant *non obstante veredicto* on the points reserved, which points were as follows:

First. The contract of 1874 between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by the plaintiff, being revocable at will at the power of the defendant, and the defendant having exercised this right, there can be no recovery, and the verdict must be for the defendant.

Second. The contract of 1874 between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by the plaintiff, was revocable at any time on reasonable notice from one to the other. The uncontradicted evidence being that sixty days' notice of the revocation of the contract was given by the defendant to the plaintiff, the contract thereupon terminated, and there
36 can be no recovery for breach thereof after the expiration of the said sixty days, and the verdict must be for the defendant.

(Endorsed:) 17. Oct. sess., 1886. C. C. U. S. Ewing *vs.* Wilcox & Gibbs S. M. Co. Motion for judgment for defendant on points reserved. Filed Apr. 20, 1888. Samuel Bell, clerk. MacVeagh.

37 And afterwards, to wit, on the 21st day of April, A. D. 1888, the defendant, by its attorney, comes into court here and moves for a new trial in the words and figures following, to wit:

38 C. C. U. S. October Sess., 1886.

EWING
vs.
WILLCOX & GIBBS SEWING MACHINE COMPANY. } No. 17.

And now, April 21st, 1888, MacVeagh, for defendant, moves for a new trial and assigns the following reasons:

1. Because the verdict was against the weight of the evidence.

2. Because the jury was not constituted as a whole of persons capable, from the facts developed since the trial, of determining impartially the points in issue in the case. As appears by affidavit filed, it has been discovered that one of the jurymen was a stock-

holder of the company at the time of the beginning of the present suit and procured his stock through the plaintiff in this case, and was one of the " most valued friends " of the plaintiff.

(Endorsed :) 17. Oct. sess., 1886. C. C. U. S. Ewing *vs.* Willcox & Gibbs S. M. Co. Motion for new trial and reasons. Filed Apr. 21, 1888. Samuel Bell, clerk. MacVeagh.

39 And afterwards, to wit, on the 25th day of April, A. D. 1888, this cause coming on to be heard on motion for a new trial and having been argued by counsel for the respective parties and duly considered by the court, it is ordered that the motion for a new trial be, and the same is hereby, denied.

40 And afterwards, to wit, on the 19th day of June, A. D. 1888, this cause being called for argument on motion for judgment for defendant *non obstante veredicto* on the points reserved and having been argued by counsel for the respective parties, *and* the court, not being fully advised of the premises, takes the same under consideration.

41 And afterwards, to wit, on the 22nd day of June, A. D. 1888, the court enters the following order, to wit:

42 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. October Sess., 1886.

D. S. EWING
vs.
WILLCOX AND GIBBS SEWING MACHINE COMPANY. } No. 17.

And now, to wit, this 22d day of June, A. D. 1888, the motion for judgment *non obstante* on the points reserved is denied and the points disaffirmed.

(Endorsed :) No. 17. October sess., 1886. C. C. U. S., E. D. of Pa. Ewing *vs.* Willcox & Gibbs Sewing Machine Co. Order denying motion for judgment *non obstante* on points reserved, &c. Filed Jun 22, 1888. Samuel Bell, clerk.

43 Whereupon, on the 27th day of June, A. D. 1888, judgment is entered on the verdict in favor of plaintiff and against the defendant for the sum of fifteen thousand one hundred dollars ($15,100).

44 And afterwards, to wit, on the twenty-eighth day of June, A. D. 1888, the defendant, by its attorney, files the following bill of exceptions, to wit:

45 Be it remembered that in the term of October, A. D. 1886, came Daniel S. Ewing into the circuit court of U. S. for the eastern district of Pennsylvania and impleaded the Willcox and

Gibbs Sewing Machine Company in a certain plea of trespass on the case, &c., in which the said Daniel S. Ewing declared (*prout narr.*) and the said Willcox and Gibbs Sewing Machine Company pleaded (*prout* pleas); and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the Honorable William Butler, — of the judges of the said court, on Monday, the sixteenth day of April, A. D. 1888, the aforesaid issue between the said parties came to be tried by a jury of the said — for that purpose duly impannelled (*prout* list of jurors); at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid impannelled to try the said issues, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiff offered the following evidence:

46 C. C. U. S.—Butler, J.

DANIEL S. EWING
vs.
THE WILCOX & GIBBS SEWING MACHINE COMPANY OF NEW YORK.

MONDAY, *April 16th*, 1888.

Present: John G. Johnson, Esq., for plaintiff; Hon. Wayne MacVeagh, for defendants.

(Agreement of 15th October, 1874, merged into more formal agreement, dated same date, offered in evidence by counsel for plaintiff.)

(Objected to. This is a memorandum of agreement stating, "It is hereby understood and agreed that from this 15th day of October, 1874, a new agreement is to be entered into in the main as follows (reading same). The agreement, as read, is set out below, page 112. Then the contract sued upon was entered into and contains a stipulation distinctly that all contracts and agreements made prior to the date first above written are hereby nullified and satisfied.

(The court requested counsel for plaintiff to state his object in offering same.)

(Mr. Johnson replied that he would defer his explanation for a moment, but would read the first agreement (reading agreement of 15th October, 1874).

Exception for defendant.

The agreement, as read, is set out below, page 114.

47 DANIEL S. EWING, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. What was the date of your first connection with the Wilcox & Gibbs Company's sewing-machines?

A. With their sewing-machines, about the year 1865; with the company, in the year 1866, when they organized.

Q. It was not a corporation at first; it organized in 1866?
A. Yes, sir.
Q. Where were you connected with it?
A. 720 Chestnut street, Philadelphia.
Q. In what position?

(Objected to as irrelevant.)

Mr. JOHNSON: I desire to prove my opening, that it was not an agency which had its inception in 1874, with a value commencing then, but that it was an agency which the contract of 1874 recognized as having existed, which had built up a value, which value, of course, entered into the agreement of 1874 and was continued by it.

The COURT: As I understand it, your suit is upon the contract for damages—for breach on the part of the defendant.

48 You have opened that you had this former connection with these defendants, and that you paid for that connection a certain sum of money. You have opened that the defendants, in bad faith, finding it desirable on account of the relations existing between the parties, systematically disregarded the rights of the plaintiff, and sought, in your own language, to "freeze him out;" that he was averse to giving another agreement, and you then stated what the agreement was and proceeded from that.

Now, is it legitimate to show just what you have opened? It would be legitimate, I agree, that, if you are entitled to recover for a business destroyed, you must be permitted to recover for what the business was worth, and if you can show that by your former dealings that would be entirely legitimate; but there is here a much earlier date, and, according to your own statements and what we all know, the value of sewing-machines changes in the public judgment often. What was paid for them at so remote a period might really bear no connection to the value of the property at the time of the breach of this contract. That is one consideration. The

49 question is whether or not you can get back of the contract, except for what you have named, to wit, to show the value of the property that you lost by reason of their failure to carry out their contract, if you did lose, and then the question first stated arises whether or not it is legitimate to show it in that way.

Where specific property has been sold at a prior time we all understand that it is entirely legitimate to show that when the question of value is involved; but here is a property that is changing with every changing day, or every changing hour, by reason of new inventions coming up.

Mr. JOHNSON: I propose to supplement that by proof as to what the state of the business was in 1867, as to its magnitude and its condition in 1874 and 1879; to show that what was practically the good-will or the bonus paid for the privilege was for something which had not depreciated since by virtue of any falling off of the business.

After some discussion Mr. Johnson stated: "The moment I find

the extent of your honor's rulings I will qualify my testimony to keep within them."

50 After further discussion the court stated: I do not know the case as counsel do, and it may assume such a shape that what you propose will be admissible. As it now stands, without being able to understand what the defense may be, I am very much impressed with the belief that the court should not admit you to go into what you have opened, except probably to the extent of showing what such a business as the plaintiff had at the time the defendant broke it up, as charged, was worth.

Mr. JOHNSON: I will act upon your honor's suggestion, and will only offer it for the first reason as stated.

The COURT: Your offer is to show, as the measure of the value of the business said to have been broken up and lost, what the plaintiff paid the defendant for a similar business in 1867—that the plaintiff bought from the defendant a business similar in value and kind in 1867.

Mr. MACVEAGH: The difficulty we are put to in reference to such an offer is this: As the measure of damages, if it could be kept to that, and if there was not the difficulty that Mr. Johnson in

51 his opening emphasized about it, it would present a totally different question of evidence.

The COURT: In considering that the court will have to suppose that Mr. Johnson will eliminate every such thing.

Mr. JOHNSON: I will put it as put in the offer.

Mr. MACVEAGH: But Mr. Johnson has already in his opening stated distinctly that, owing to causes with which the jury as business men are familiar, the value of sewing-machines originally included in the 1867 contract had so diminished that it had come to very little indeed by 1874. Now, the contract of 1874 is made, and he summons us here with admirable skill in pleading, stating just what we would have compelled him to have stated if he had not, and omitting everything that we would have compelled him to have stricken out if he had inserted it, and therefore just bringing us properly into court; but it is the only notice he has ever given us and the only one he properly could, which is that in October, 1874, we made a contract with him to which he proposes to hold us, and he

52 sets out that one of the terms of that contract to which we assented and by which we are bound, and to which he assented and by which he is bound, is that all former transactions between us are not only nullified but satisfied.

The COURT: Taking Mr. Johnson's offer just as made now, as I understood it and stated it, supposing I was to refuse the offer by sustaining the objection to it, would it not be error? I saw the trouble and I stated it to Mr. Johnson at the outset.

Mr. MACVEAGH: I want to take it as it stands.

The COURT (after some discussion between counsel): While the question involved in the offer is not entirely free from difficulty, and especially bearing in mind in respect to its relevancy, looking at the offer just as it now stands upon the record, I think it would be error to sustain the objection. The testimony may turn out to be

of the least possible value, and at the end of no value; but the offer does tend to prove what you propose—the value of the property that you lost, if you lost it.

It is an offer to show that you paid at a prior time. If it was a
53 nearer period it would be of greater value, but that it was seven or eight years away simply diminishes the force that these parties—not somebody else, but these parties—placed an estimate upon the value of a business just similar to this. That is your offer. It may be that all testimony relative to it will shed virtually little light, and possibly none at all, upon the question; but I cannot exclude the offer on that account. At present we must confine ourselves to that, and the witness must not speak of his former relation with these parties at all, except in that connection.

(Exception by defendant.)

By Mr. JOHNSON (after admonishing the witness to reply to his questions strictly, and to make no statements outside): When was your agency for the sale of this sewing-machine granted to you by the company?

A. In May, 1867.

Q. Who had been carrying it on before that time, the company or yourself?

A. Mr. James Wilcox and myself.

Q. What did you buy then?

Mr. MACVEAGH: That is in writing.

54 (Mr. Johnson offers in evidence agreement and receipt of May 16th, 1867.)

(Mr. MacVeagh objects to the admission in evidence and the reading to the jury of the contract of May 16th, 1867, and the receipt given thereunder, upon the ground that the declaration is exclusively upon the contract of October 15th, 1874, setting out, among other of its provisions, "that all contracts or agreements made prior to the date of said agreement (October 15th, 1874) are hereby nullified and satisfied.")

The COURT: The paper contract referred to is not offered to support the claim to recover upon the declaration, but to show the value of the business dealt for by the parties at that time, which business, the plaintiff alleges and proposes to show, was precisely similar in kind and value with the business which he alleges was broken up by the defendant's refusal to comply with the contract in suit.

(Mr. MacVeagh objects to the admission of the testimony for the reason assigned by the court, because of the lapse of 12 years between the date of the papers now offered in evidence and the alleged abrogation by the defendants.)

55 (Objection overruled.)

(Exception by defendant.)

(Mr. Johnson reads agreement and receipt of May 16th, 1867.)

The agreement and receipt as read are set out below, pages 154–156½.

Mr. MACVEAGH: This paper is put in evidence and the receipt

also, and the receipt distinctly says that that is simply the balance due the company from the Philadelphia office, and transfers all the merchandise they had here not paid for and all their book accounts to him. He simply buys the property. It is exactly the balance, and there cannot be the slightest possible difficulty about it, because it is correct to the very cent—that is, he had been doing business here, as the paper shows, and receiving lots of goods. Each year at the settlement there had been about $25,000 of goods sold, and when they came to close, as is often the case, either for goods that had not been paid for or in the other case, there was such an amount due. He bought out all those book accounts and all machines in that office for which he had not paid, and squared up the account between the two.

56 The COURT: Do you mean to say that the money paid was in consideration of the merchandise and book accounts alone?

Mr. MACVEAGH: Absolutely, and his receipt shows it. Receipt closes with words "transfers to him all our interest in the stock, fixtures, book accounts, etc."

Mr. JOHNSON: He got the item of good-will, which was agreed to be worth a certain sum of money.

The COURT: How will you get at that?

Mr. JOHNSON: By his telling us.

Mr. MACVEAGH: That illustrates the irrelevancy of this testimony.

After some discussion between counsel and court the court stated: "Whether the testimony just given to the jury, and which the court is asked by the defendant to strike out, supports the offer or tends to support it is the question raised by the offer to strike out. It tends to support it. It may turn out to be of no value. It may turn out that the offer itself cannot and will not be proved. The objection to the testimony on which the offer to strike out is based is that this writing shows what the money consideration for the business transferred at that time was

57 paid out. The court does not agree with counsel in the allegation that the contract does show in terms what the money was paid for, and, at all events, it does not show—and that is what the court meant to say and more properly should have said—that the money was paid simply for merchandise transferred and for nothing else. The allegation of the plaintiff in making the offer is that it was a consideration for the good-will of the business as well, and the paper does not show that it was not.

Furthermore, this is a receipt, and it may be explained by parole testimony, like any other written agreement entered into, to bear witness to what the parties agreed upon. It is a receipt, and a receipt is always open to explanation by parole testimony. For that reason I must refuse to strike it out."

Mr. MacVeagh takes an exception of the refusal to strike out the testimony, and gives as an additional reason for the motion that part of the objectionable testimony is the contract of the same date as the receipt.

Mr. JOHNSON: The contract does not say anything about that.

58 (To the witness): You paid how much at the time that you bought a certain thing—that is, you paid how much to the company?

A. $25,398.40.

Q. How was that amount got at?

A. It was estimated.

Q. Was there any estimate of the value of the good-will?

A. There was an estimate made and placed upon my books at the time.

Mr. MACVEAGH: I object to the testimony of the witness on the ground that it tends to vary a written contract and is inadmissible, and it is also objected to as irrelevant.

(Objection overruled.)

(Exception by defendant.)

By Mr. JOHNSON:

Q. How much was that estimate?

A. $15,000.

Q. The assets that you acquired at that time, as described by you in the receipt which I have named, says: "A certain balance of account amounts to $25,000 in the Philadelphia office." How was that item made up?

59 A. There was an amount of about $8,000. Mr. James Wilcox had leased the store 720 Chestnut street, in a very dilapidated condition, and put it in order, equipped it ready for business, at an expense of about $8,000. The book accounts were taken at full valuation, both good and bad. The stock was a very small item, with the exception of machines, $200 machines, such as could not be sold and never were sold, except in the way of exchanging for advertising and something of that kind.

Q. You took them just as the balance?

A. Just as they represented the balance.

Q. What was the balance?

A. $25,398.48, and as I recall the fact to mind, though I am not positive as to it——

Q. If you have no remembrance of it then do not give it.

A. It is a very important matter as to what it may be in that account.

Q. If you remember it, well and good; if you do not remember it, then I do not want it. You have said that you were not certain of your remembrance. Give only that which you are certain of.

60 A. The business had been done previously to 1865 by Fairbanks & Ewing, who had bought the business at a price——

Q. I do not want anything, except what bears upon this balance.

A. It does.

Q. State whether with the assent of the company you sold an interest in this business within a short time afterwards.

A. Almost immediately. One-half of the good-will for $7,500.
Q. Was that with the assent and knowledge of the company?
A. Yes, sir.
Q. To whom did you sell the half interest?
A. Henry R. Cowell.
Q. Did you sell a half interest in the business, or the good-will simply?
A. A half interest in the good-will at $7,500.
Q. How long did he continue in the business?
A. I think it was nearly two years.
Q. At the expiration of that time what was done with his interest in the good-will?
A. I bought it back from him.
61 Q. For what price?
A. $7,500.
Q. The new contract that was entered in 1874 lopped off certain of the territory covered by the old contract, did it not?
A. Yes, sir.
Q. How did the value of this good will or privilege that you had in 1874, when the new contract was entered into, compare with its value in 1867—had it diminished or increased?

(Objected to as above.)
(Objection overruled.)
(Exception by defendant.)

A. The business had grown quite materially until the company announced that they were making a new machine. That announcement was several years prior to its advent.

By Mr. JOHNSON:

Q. When was that announcement first made—how long before October, 1874?
A. Four or five years.

The COURT: That is not the period that we are inquiring about.

Mr. JOHNSON (to the witness): In asking you this question
62 as to its value in 1874, even with the territory restricted as it was by that contract, and how it compared with the value in 1867, I may take it that, if you had no right under your contract of 1867 to sell the new machine it was worth nothing, may I not—the right merely to sell the old and not the new would have been worth nothing?
A. No, sir.
Q. And I assume now, in this question that I put to you, that under your contract of 1867 you had a right to sell the new machine when it came out?
A. Yes, sir.
Q. State whether the contract of 1874 was worth as much as the contract to sell the machine in 1867 was.
A. Shall I give you the company's own statement with regard to the matter?

Q. No; give your own.
A. My own views of it, do you mean?
Q. Yes.
A. I supposed that the new contract, based upon the new machine, would be worth infinitely more than the old contract, based upon the old machine.

Q. Did that value continue as late as 1879? Did anything
63 occur in the interim that would make the contract of 1874, as it was carried out, worth less, the privilege, in 1879 than in 1874?

A. Vastly.
Q. What?
A. The value of the contract of 1874 was largely in the increased amount of commission the company proposed to allow me as compensation for the territory.
Q. I mean, not as they carried out the contract, but as the contract was carried out—was it worth less in 1879 than in 1874?
A. The contract as made would have been worth more.
Q. You have said that the new machine was announced perhaps four years before this contract of October, 1874. The contract is dated 15th of October, 1874. Was that the real date of the contract? When was the contract really signed, though dated October, 1874?
A. In January, 1875, I think.
Q. When was the new machine first sent to you?
A. In August, 1875.
Q. There were delays in its coming out, I suppose?
A. More than six months' delay.
Q. In August, 1875, when they sent you the machines, what did they do in the way of allowance of discount?

64 A. They charged me 25 per cent. above contract price.
Q. That was the subject of correspondence, wasn't it?

A. Yes, sir.
Q. What was the contract price?
A. Sixty per cent. discount.
Q. What did they charge you?
A. Fifty per cent.
Q. Was that the subject of interviews and correspondence, or correspondence only?
A. Both.
Q. State about the interviews, and not about the letters. What interviews did you have on this subject?
A. I went over to New York and asked why the machines were not sent to me at contract prices. The reply made to me was, "The old contract, on which you stood so firmly, has been abrogated. The new contract written by our lawyer affords you no protection."
Q. What was said with regard to that matter of discount? State any interviews concerning the matter of the discounts, for the letters will speak for themselves.

A. I demanded the goods at contract prices. They declined
65 to fill my orders. I finally, in view of the fact that I could

not break up my business utterly without very great loss, consented to pay their arbitrary prices under protest.

Q. Did that in any way affect the carrying out of the contract—a larger discount demanded or a smaller discount allowed? How did it affect the business?

A. Very unfavorably.

Q. That does not explain it. How did it affect it?

A. By rendering unprofitable very much of the business that it was very important to do—that is, canvassing and leasing machines.

Q. There was subsequently an arrangement made of that, was there?

A. There was an arrangement, under protest.

Q. What was it? What was the interview that occurred concerning, and when did it occur?

A. That was in August or early in September, 1875, at the company's office, in New York.

Q. What took place then?

A. I have already stated that the secretary of the company declined to fill the orders.

Q. No, no. I want to know what took place when there was payments or allowances made to you.

66 A. That was in February, 1877.

Q. What took place at that interview, and who did you see?

A. The president of the company called me over to New York to meet the board of directors. I went to New York on the 15th of February, 1877, at the request of the president of the company. The president asked me to state my grievances.

Q. What took place when you were there?

Mr. MacVeagh:

Q. Did not this interview result in a written agreement and contract between you and them, and the payment of money upon it by them to you?

A. It resulted in that.

(Objected to.)

Mr. Johnson: Proceed with what occurred after that. Let me read it: "Received, New York, February 15th, 1877, the sum of $420.52, making the discount up to 55 per cent. on all goods received by me since," etc., etc.

The receipt and contract as read is set out below, page 162.

67 By Mr. Johnson:

Q. That was a receipt given by you?

A. Not voluntarily, sir.

Q. What induced the giving of that receipt?

A. The president of the company stated to me in terms that unless——

(Objected to as not admissible.)

Mr. JOHNSON: I propose to show that the witness was compelled to give that receipt for the past amount due by reason of their refusal to furnish him any goods unless he did it, and that it was necessary for him, therefore, to sign it.

The COURT: What is the object of the agreement itself—what is the object in calling it out?

Mr. JOHNSON: Mr. MacVeagh insisted upon that. I want to show that after that they still insisted upon sending the machines out at a rate of discount not such as the contract permitted him to get. Mr. MacVeagh then interpolated this agreement. I did not intend to offer it. It was very legitimate cross-examination, of course, but I did not propose to bring it in. I wanted to prove that all the way down they never would give him the discount that the contract called for.

68 The COURT: You now ask the witness to state how he came to take that paper?

Mr. JOHNSON: Yes; that is it.

Mr. MACVEAGH: Mr. Johnson does himself injustice in saying that I brought out this paper. I did not do so.

After some argument the court stated: "This question comes up somewhat irregularly. The witness is now being examined for the purpose of showing his intercourse with the defendants to this contract with a view of establishing his allegation that they violated it, and furthermore to establish what damage he sustained thereby. This paper may well be appealed to by the other side, I suppose, as relevant and important hereafter. It is interjected here almost necessarily by no fault of the defendant. It comes out in a history of the intercourse between these parties which is now being given to us by the witness. He refers to an agreement between these parties, and was about to state it briefly when the objection was interposed that it was in writing, and that the writing spoke for itself.

69 Counsel for plaintiff desires to get rid of the effect of the paper, as I understand it, by showing facts that may require the court to hold that the paper is of no effect. I submit to Mr. Johnson, is it necessary to pass upon that question at the present time?

Mr. MACVEAGH: In has been read in evidence, but the question can be waived for the time being.

The COURT: If the paper is to be regarded in evidence, and if Mr. Johnson desires to show facts now to enable *to* court to judge whether or not this is a valid contract between the parties, he may do it.

Mr. JOHNSON: You will observe that I did not mean to bring it in. It is now in and I wanted to get both sides in.

The COURT: This may be raised hereafter as well. If the offer is to show such facts as to invalidate this paper the court will permit the witness to be examined showing the circumstances under which it was signed.

Mr. MacVeagh objects to the witness testifying as to any pressure

brought to bear upon the witness, such as he has alleged, to secure his signature to the paper, such pressure being a threat on
70 the part of the defendant not to comply with this contract unless he did so sign it.

In reply to the above the court permits the witness to be examined to show the circumstances under which the paper was signed.

(Exception by defendant.)

By Mr. JOHNSON:

Q. State briefly what led up to your signing that paper.

A. I had stated to the board at the request of the president a history of my relations with the company, which he professed not to know, and what was the basis of my claim against the company which I presented at that time.

Q. What did you state as your claim?

A. The difference between the invoices rendered me and the contract price.

Q. Something was said about a poor mouth being made—that you put that as a request to them.

A. I put that as a demand.

Q. You then stated your claim. Then what took place?

A. The proposition was made to give me $500 to settle the claim. I rejected it. The president turned to me and asked me then
71 what proposition I had to make. I said I proposed to leave the matter to arbitration. The president then said, "You will settle this matter here now, and as we dictate, or we will cancel all your orders and send you no more goods."

Q. Then did you execute the paper?

A. The writing was then introduced (indorsed) on the back of the agreement and handed to me for my signature. I said to them, "I am in your hands; I must go on with my business. Settle the matter to suit yourselves." I turned to Mr. ——, the president, and asked him if the tables were reversed if he would sign that paper. He replied, "You had better do it." I signed it.

Q. That was February 15th, 1877?

A. Yes, sir.

Q. Your dealings continued with them under the basis of the allowance of the discount that that paper specified, did they?

A. Yes, sir.

Q. What took place between you up to the time of the cancellation of the contract? What were your relations with them? With whom did you deal?

72 A. Principally with the secretary of the company, Mr. Parmalee.

Q. Did you receive at any time any notice by them of the cancellation of the contract?

A. Not until October, 1879, I think it was.

Q. The letters will speak for themselves. But did you have any verbal interviews concerning this cancellation?

A. No, sir.

Q. Was it purely in writing that the notification was given to you, and that the talk was about the cancellation?

A. Unless I might state another interview I had with the board of managers which might be considered as leading up to the cancellation.

Q. If it bears upon the cancellation, well and good; you may then state it.

A. I do not recollect the exact date. I think the letters will show as to that fact. I think various propositions were made to me at that meeting.

By the COURT:

Q. Do you mean before you got the notice of cancellation?

73 A. Yes, sir; a few months previous. Various propositions were made to me to give up the business to them, none of which were at all satisfactory to me.

By Mr. JOHNSON:

Q. Then you received the letters, which I will read in a moment. There was a time fixed when they would not furnish you any more goods?

A. Yes, sir; there was a time fixed.

Q. Did you get any additional goods from them after that period?

A. I sent over to them various times certified checks for machines, which they declined to furnish. I was then carrying on business at 1127 Chestnut street.

Q. When had you moved there?

A. Just prior to the contract of 1874—about midsummer of 1874.

Q. Did the company know of your intended removal?

A. I had advised them of my proposed removal to 1127 Chestnut street.

Q. At the time they stopped delivering you further goods what did you have on hand of their goods?

A. Many hundreds of their old pattern machines, but very few of their automatic or new ones.

74 Q. Was the continued supply of the new machines in any way useful in selling old ones?

A. Altogether so.

Q. How?

A. By bringing customers and being known as the representatives of the Wilcox & Gibbs machines.

Q. What was the cost price of the machines that you had on hand? I mean the old pattern machines which were left on your hands.

A. They were invoiced to me at various prices.

Q. State about the aggregate.

A. Several thousand dollars. I don't know the exact amount.

Q. Was there any agency established in this city by the company?

A. There was, about the 1st of January, 1880.

Q. Which has been continued since?

A. Yes.
Q. Where is its office?
A. At the northeast corner of Fifteenth and Chestnut.
Q. Have you your books here?
A. Yes, sir.
75 Q. Have you a memorandum from which you can give the sales of machines that you made?
A. Yes, sir.

Witness produces paper and states: "That is a correct statement of my business for the five years ending January 1st, 1870."

Q. Do you remember the date after which they would not supply any more goods?
A. Almost immediately after serving me a notice.
Q. I mean the date of that.
A. October, 1879.
Q. So that that includes two months when you had no supply?
A. They declined to supply any machines during the months of October and November.
Q. State the business that you did.
A. In 1875, $30,551.46.
Q. How is that divided?
A. New machines, $22,614.60; old machines, $7,936.86, making an aggregate of $30,551.46.
In 1876, new, $42,961; old, $5,799.48, making $48,760.48.
In 1877, new, $30,135.80; old, $5,800.06; aggregate,
76 $35,936.40.
1878, new, $15,829.14; old, $5,273.78; aggregate, $21,102.92.
1879, $11,741.68 of new, and $2,789.63 of old; aggregate, $14,531.51.
Q. In that connection you have been asked to produce a memorandum of your sales of the new machine, have you not?
A. Yes, sir.
Q. State that in this same connection by years.
A. The sales of the New Home machines and other machines.
Q. What other machines?
A. Various others.
Q. What, for instance?
A. Any that I happened to have in the way of exchange.
Q. State those.
A. In 1875, of new, $5,291; old, $1,984.22; total, $7,275.22. In 1876 I sold $1,449.88 of old machines.
Q. How many new?
A. None. In 1877, $448.80 new; old, $1,450.17; total, $1,898.97.
1878, $40,540.42 new; old, $1,318.45; aggregate, $41,858.87.
77 In 1879, $47,561.85 new, and old $697.42, aggregating $48,259.27. The total of the Wilcox & Gibbs five years is $150,882.83.
The total of the other sales during those five years was $100,742.21, making a grand total of about $250,000.
Q. Have you a statement of the profits realized on the sale of the Wilcox & Gibbs?

A. I could not separate that possibly.

Q. State what you have in '75.

A. My books show a profit of one cent. They finally held every dollar of my profit with the exception of one cent. They gave me one cent to pay interest on my time.

Q. How about 1876?

A. $5,498.30; 1877, $5,348.08; 1878, $5,057.70; 1879, $7,474.91; total for the five years, $23,379.

Q. After the making of this contract in October, 1884, down to the abrogating of it, what efforts did you make to sell the Wilcox & Gibbs sewing-machine?

A. All the effort that I had ever made.

Q. That does not explain itself. State what you did. You endeavored to sell sewing-machines with the force you had?

78 A. I had a central store fitted up with special reference to the Wilcox & Gibbs automatic machines, taken on a long lease. I had qualified teachers and saleswomen, those that I had had for years, to show the machine up to the best advantage they were capable. I made every effort that is usually made in the way of advertising, sending out circulars, &c., to bring customers to the store. I offered all the inducements that I could afford consistently with the understanding with the company to secure trade from those dealing in sewing-machines about the city.

Q. There was a large falling off in your sales during 1878 and 1879. To what was that attributable?

A. To many causes. The company frequently delayed the shipment of machines to me. The company required me to pay over to them $10,000 of my working capital; that had been done at a time before on the basis of endorsed notes which I had to take up subsequently as fast as I could. They had withdrawn from my business $10,000 of my working capital during those five years.

By Mr. MacVeagh:

Q. They had withdrawn from your business $10,000 of
79 your working capital?

A. Yes, sir.

By Mr. Johnson:

Q. Explain what that is used for and what it needs.

A. The plant of my business locked up $15,000 first for the good will of the business and for store fixtures and horse and wagon, and also——

Q. What do you mean by the withdrawal of $10,000 of working capital? Do not state where your capital was locked up in certain things, but state where its withdrawal affected you.

By Mr. MacVeagh:

Q. No; what you meant by saying it was withdrawn.

By the Court:

Q. How did they withdraw the capital?

The WITNESS: They compelled me to pay it.

By the COURT:

Q. Notes that you owed them?

A. No. May I make an explanation?

Mr. JOHNSON: No. They compelled you to pay notes you had given them to the amount of $10,000?

A. Yes, sir.

Q. That line of credit run from what time to what time?

(Objected to. Objection sustained.)

80 Q. You sold New Home sewing-machines in your place, and there was a largely increasing sale of them. Didn't that interfere with the sale of the Wilcox & Gibbs sewing-machine, and did you not devote your energies primarily to the New Home?

A. Not at all.

Q. Explain how the New Home sales were made and the extent of their interference with the sales of the Wilcox & Gibbs.

A. The sales of the New Home machine were made very largely throughout the country and territory which had been taken from me by the Wilcox & Gibbs. The sales were at wholesale, requiring very little effort, scarcely any on my own part individually.

Q. That is, the Home machines were sold at wholesale.

A. Yes, sir, principally. I had no retail department for the sale of the New Home machine until after the year 1880. I had no teachers or saleswomen on the floor to sell that machine. All that I had devoted themselves exclusively to the Wilcox & Gibbs.

Recess to 2 p. m.

81 2 P. M.

Mr. Johnson read letter dated August 11, 1875, from J. Parmalee, Jr., to Ewing.

Letter dated August 11, 1875, referred to and last letter read.

Letter from Parmalee to Ewing dated August 13, 1875, read.

Mr. MACVEAGH: I suppose these letters are under my exception?

Mr. JOHNSON: This is an offer to show the dealings between the parties under the new contract in an alleged, averred by us, refusal by them to give it to us at the discount we were entitled to under the contract. I have previously given the oral interviews. I am now simply reading the letters connected with them and the letters connected with that alleged refusal.

Mr. MACVEAGH: My objection to that is that there is already in evidence a written agreement between the parties whereby the plaintiff accepted a certain sum in full satisfaction of this very matter.

The COURT: That came in out of its place and tends slightly to embarrass the case in coming in where it did, but I think this
82 testimony must go in. We will have to consider the effect of that paper afterwards.

Exception for defendant.

All of the following correspondence is read subject to the objection of Mr. MacVeagh as irrelevant on the ground that the letters are attempts to vary and modify a written contract between the parties.

(Objection overruled. Exception for defendant.)

Mr. Johnson read the following:

2 letters from Parmalee to Ewing, dated August 13th, 1875.

Letter from Parmalee to Ewing, dated August 14, 1875.

Telegram from Ewing to Wilcox & Gibbs Sewing Machine —, August 16, 1875.

Telegram from same company to Ewing, August 16, 1875.

Letter from Ewing to Parmalee, August 16, 1875.

Letter same date to J. Edward Parmalee, Jr.

Letter August 17, 1875, from Parmalee to Ewing.

Letter August 18, 1875, from Ewing to Parmalee.

Telegram August 19, 1875, from Parmalee to Ewing.

One letter Aug. 20, 1875, from Ewing to Palmer.

Letter August 21, 1875, from Parmalee to Ewing.

" August 21, 1875, from Parmalee to Ewing.

" August 24, 1875, from Ewing to Parmalee.

" August 27, 1875, from Ewing to machine company.

83 Letter August 27, 1875, from Parmalee to Ewing.

" August 28, 1875, " Ewing to sewing-machine Co.

Letter November 3, 1875, from Parmalee to Ewing.

" November 4, 1875, " Ewing to Parmalee.

" November 11, 1875, " Parmalee to Ewing.

" " 17, 1875, " Ewing to machine company.

" " 18, 1875, " machine company to Ewing.

" January 17, 1876, " Ewing to Parmalee.

" " 18, 1876, " Parmalee to Ewing.

" " 19, 1876, " Ewing to Parmalee.

" " 20, 1876, " Parmalee to Ewing.

" " 21, 1876, " Ewing to Parmley.

" " 22, 1876, " Parmalee to Ewing.

" February 2, 1876, " Parmalee to Ewing.

" " 2, 1876, " Ewing to Parmalee.

" " 9, 1876, " Ewing to Parmalee.

" " 9, 1876, " Ewing to Parmalee.

" " 17, 1876, " Ewing to Co.

" " 19, 1876, " Co. to Ewing.

" " 21, 1876, " Ewing to Wilcox & Gibbs Sewing Machine Company.

Letter February 23, 1876, from Ewing to Co.

84 Letter February 24, 1876, from Co. to Ewing.

" " 25, 1876, " Ewing to Co.

Letter February 26, 1876, from Ewing to sewing-machine Co.

" " 28, 1876, " Ewing to sewing-machine Co.

" September 11, 1876, " Parmalee to Ewing.

" " 12, 1876, " Ewing to Parmalee.

" " 12, 1876, " Parmalee to Ewing.

Letter September 14, 1876, from Ewing to Parmalee.
" " 27, 1876, " Ewing to Parmalee.
" " 28, 1876, " Parmalee to Ewing.
" October 2, 1876, " Parmalee to Ewing.
" " 3, 1876, " Ewing to Co.
" " 3, 1876, " Ewing to Parmalee.
" " 27, 1876, " Ewing to Co.
" " 28, 1876, " Parmalee to Ewing.
" November 10, 1876, " Ewing to Co.
" " 24, 1876, " Ewing to Co.
" " 27, 1876, " Parmalee to Ewing.
" February 10, 1877, " Ewing to Co.
" " 16, 1876, " Parmalee to Ewing.
" June 29, 1877, " Ewing to Co.
" " 29, 1877, " Ewing to Parmalee.
Letter June 30, 1877, " Parmalee to Ewing.

83 Letter July 30, 1877, from Parmalee to Ewing.
" " 31, 1877, reply from Ewing to Parmalee.
Letter October 8, 1877, from Parmalee to Ewing.
" " 9, 1877, reply from Ewing to Parmalee.
" " 24, 1877, from Ewing to Co.
" " 25, 1887, " Parmalee to Ewing.
" November 1, 1877, from Ewing to Co.
" " 3, 1877, " Parmalee to Ewing.
" " 3, 1877, " Ewing to Co.
" " 5, 1877, " Parmalee to Ewing.
" " 13, 1877, " Parmalee to Ewing.
" " 14, 1877, " Ewing to Co.
" February 1, 1878, " Ewing to Parmalee.
" " 2, 1878, " Parmalee to Ewing.
" " 6, 1878, " Ewing to Parmalee.
" " 7, 1878, " Ewing to Parmalee.
" " 7, 1878, " Parmalee to Ewing.
" " 8, 1878, " Ewing to Parmalee.
" " 14, 1878, " Parmalee to Ewing.
" " 15, 1878, " Ewing to Parmalee.
" October 29, 1878, " Parmalee to Ewing.
" " 30, 1878, " Ewing to Co.
Letter October 31, 1878, from Parmalee to Ewing.

86 " November 1, 1878, from Ewing to Parmalee.
" " 2, 1878, " Parmalee to Ewing.
Letter November 8, 1878, from Parmalee to Ewing.
" " 18, 1878, " Parmalee to Ewing.
" " 19, 1878, " Ewing to Co.
" May 3, 1879, " Ewing to Co.
Letter October 10, 1879, from Parmalee to Ewing.

87 Mr. Johnson read letter, October 13, 1879, from Ewing to the sewing-machine Co. All of the above letters are set out below, pp. 166–274.

DANIEL S. EWING cross-examined as follows:

By Mr. MACVEAGH:

Q. Your first connection with the business, I think you have stated, was in June, 1865?

A. I did not state the month. I said about 1865 my connection with the business — separate from Fairbanks & Ewing. I was connected with that business prior to that time.

Q. Prior to 1865 you were connected with the business of Fairbanks and Ewing?

A. Yes, sir.

Q. I think you said from about the month of June, 1865, to the month of May, 1867, you were carrying on the business here as agent, were you not?

88 A. I do not know what interpretation you put upon the word agent.

Q. State just what your relations to the Wilcox & Gibbs Sewing Machine Co. in the city of Philadelphia and the adjacent territory were from June, 1865, to May, 1867.

A. Mr. Wilcox made a proposition to me to take the business, relieving Fairbanks & Ewing of the business, at an office by itself, upon an arrangement agreeable to himself and myself. Mr. Wilcox bought the business from Fairbanks & Ewing, they having previously bought it from him.

Q. You conducted the business?

A. I did.

Q. Exclusive substantially?

A. Substantially.

Q. At the Philadelphia office for that time?

A. Yes, sir.

Q. I wish you would look at this extract and, according to the best of your judgment and recollection, say whether you believe it is a correct account of what transpired between this office in your control and the company or the partnership from June, 1865, to May, 1867 (handing extract to witness).

89 A. There is an error at the very outset. Here is a charge against the Philadelphia office to Wilcox & Gibbs Sewing Machine Co. in June, 1865. There was no such organization at that time.

Q. Will you point out any other error in it?

A. Figures, of course. I am not competent to say.

Q. Look at them and say to the best of your judgment whether you have any reason to doubt their correctness.

A. I have no reason either to accept or reject them.

Q. Look month by month. As a business man you are certainly now able to form some judgment whether it looks to you to be a reliable or unreliable statement?

A. I could not pass judgment upon figures at this late day.

Q. The Philadelphia office was in the habit of receiving considerable amounts of merchandise from the Wilcox & Gibbs Co. in New York, was it not?

A. After 1866; yes, sir.
Q. In 1865 also?
A. From James Wilcox; yes, sir.
Q. It was called the same, the Philadelphia office?
A. I do not know why it should have been.
Q. What name would you have given to it?
A. It belonged to James Wilcox.
Q. Was it in Philadelphia?
90 A. Yes, sir.
Q. Then it was the Philadelphia office of James Wilcox?
A. Yes, sir.
Q. And it was receiving considerable amounts of merchandise from New York which came under your actual control?
A. Yes, sir; within limitations.
Q. You remitted moneys for the goods thus received from the New York office from time to time, did you not?
A. I did.
Q. The net results of the merchandise you received and the cash you paid are shown, are they not, by the balances made from this account?
A. It would be altogether guess-work for me to answer definitely with regard to any of these figures.
Q. You say that now to the jury?
A. I do say that.
Q. Did you not yesterday testify in reply to your own counsel, when shown the receipt, that you had paid the sum of $25,398.48, and describe it as the balance due this company from the Philadelphia office to the 15 inst., May, 1867?
A. I stated that was their receipt for that amount of money I paid to the company.
Q. Are you not able to say that these two sums amount
91 to exactly the same amount to the penny?
A. It could be made to appear so; yes, sir.
Q. Is that the answer you desire to make to my question?
A. I have never seen those figures before.
Q. Do you say it could be made to appear or do you say it does so appear by the statement I now show you?
A. Those two final items do amount to the total as described in that receipt.
Q. That merchandise was billed to the Philadelphia office at 40 per cent. discount less the retail price?
A. Yes, sir.
Q. Who ordered the merchandise that was sent to the Philadelphia office during that time?
A. I did in part; not wholly.
Q. But generally?
A. Generally I did.
Q. What would you estimate, without looking at any papers, to have been your total amount of merchandise received during that time?
A. I could not positively give approximate figures.

Q. Is there anything else you will undertake to say is a mistake in this paper, except the heading of it—the name of the company (showing paper to witness)?

92 A. I do not think that that is in anywise a correct statement between the New York office and the Philadelphia office.

Q. You have the books covering that period at your office?

A. I think I have.

Q. I will ask you at recess to bring them here after recess and resume your examination, and will have to ask you to be prepared to go over the items of this account from the books in your possession.

The COURT: The better way will be to give him the paper and let him go over the books at recess with the paper and point out any errors.

The WITNESS: I am not certain they are in my possession. They did not belong to me; they were not my books.

By Mr. MACVEAGH:

Q. Was your agreement with your partner, Mr. Cowell, in writing?

A. Yes, sir; of course.

Q. Have you your copy of it?

A. I am not certain; I doubt very much whether I have. It was concluded long ago.

Q. Will you give us, according to your best recollec-

93 tion, what the contents were?

A. Mr. Cowell bought from me the half interest in the good will of the business for $7,500, and then joined with me in the business as an equal partner, furnishing half the capital.

Q. How long was this agreement to continue?

A. I am uncertain as to the time it was to continue. It was discontinued by mutual consent, however, in 1869.

Q. When did you say it began?

A. Simultaneously with the purchase of the business from the Wilcox & Gibbs Sewing Machine Company, or about that time.

Q. How near would you come to that? May 16, 1867?

A. About that time.

Q. Within three months of it?

A. Yes, sir; within one month of it.

Q. Where does Mr. Henry R. Cowell live now?

A. I am uncertain whether he is living yet, but my last knowledge of him was in the western part of the State on a farm.

Q. Can you remember any more distinctly any of the terms of that agreement than you have given us?

A. No, sir.

94 Q. When did you say you bought it back?

A. I think it was in January, 1869.

Q. How much money did he put into the business altogether? Any more than the $7,500?

A. Yes, sir; he put in half the working capital.

Q. How much was that?

A. It was to have been $12,500 each. I think the exact amount was about $1,000 less than that in actual money, to be drawn upon whenever we needed the balance.

Q. Answer a little more distinctly. How much actual cash do you say Mr. Cowell put into the business? How much actual capital did Mr. Cowell pay you—the total amount of money you got from Mr. Cowell?

A. I think it was about $19,000.

Q. How much did you pay him back?

A. I paid him back all he was entitled to under the settlement.

Q. What was that?

A. About the same amount that he had paid in with the amount of profit that we agreed upon should go to him.

Q. You do not know whether you have a copy of the agreement, but you will look for that at noon?

A. I will look for it.

95 Q. Could you give us your last address of Mr. Cowell? You have that at your office also?

A. No, sir; I have not the address. I really would not know where to direct a letter to him. I have not seen him for a number of years.

By the COURT:

Q. You say the money paid by Mr. Cowell was for the good will. $7,500 for the good will?

A. Yes, sir.

Q. Did that include the stock on hand that you had gotten from Wilcox & Gibbs?

A. The $7,500? No, sir.

By Mr. MACVEAGH:

Q. Was there any condition in the agreement you made for Mr. Cowell to retire from the business at any time?

A. No, sir; I think not.

Q. How did you come to separate?

A. Because he became very dyspeptic and wished to go upon a farm. That had brooded with him for a number of years, and he thought he was inefficient in the business and desired to retire from it and I consented.

Q. $7,500 was for the good will and the $12,500 was for the other matters?

A. Yes, sir.

96 Q. About how long were you engaged in controversy and compromise with the board of the defendant on the 16th of February, 1877, before you reached the conclusion endorsed upon the agreement?

A. With the board, only at that time.

Q. How many hours on that day do you suppose you spent there?

A. Possibly an hour and a half or two hours.

Q. Might you not have spent double that time?

A. Possibly. I do not think so, however.

Q. What other business did you carry on in this store besides the sewing-machine business?

A. Carried on pattern business—Madam Demorest patterns—and all the merchandise that is common to sewing-machine offices, such as cotton, silk, and so forth.

Q. What were your average profits from the patterns and other merchandise business you carried on there?

A. I could not state in figures.

Q. According to your best judgment, how much did you make out of the pattern business and the other merchandise business that you carried on there?

A. It would be guess-work.

Q. Give us your best guess.

A. Somewhere from $1,000 to $3,000 a year.

97 Q. That business had been established before Mr. Cowell went into the business?

A. I think not.

Q. It was established at that time, was it not?

A. No, sir; I think not.

Q. In 1867?

A. No, sir.

Q. When did you establish it?

A. Several years later. I think three or four years. Probably later than 1867; about 1870, probably, I think.

Q. You were selling the other articles of merchandise?

A. Yes, sir.

Q. And you were also selling machines?

A. To some extent; yes, sir.

By the COURT:

Q. When he went in?

A. Yes, sir—that is, such other machines as were taken in exchange.

By Mr. MACVEAGH:

Q. You were selling the Secor sewing-machine, were you not?

A. Not at that time. I was at the time the contract of 1874

98 was made. I was selling the Secor machines then.

Q. But you were not in 1867?

A. No, sir.

Q. You were selling nothing but these machines, the parts and appliances connected with them?

A. No other machine specifically at that time.

Q. Other machines that you took in exchange for those of course you sold?

A. Yes, sir.

Q. In 1874, when the new machine was made, you had established at that time and had had for several years the pattern business?

A. Yes, sir.

Q. And you also had on hand then a considerable lot of Secor machines, had you not?

A. I had some on hand; yes, sir.

Q. About how many?

A. I could not say how many. Not a very great many.

Q. They were sold from another place of business, were they not?

A. They were originally; yes, sir.

Q. They were in 1874? You had two stores at that time, had you not?

A. I am uncertain whether I had at that time. I think I had.

99 Q. So that you had a considerable number of new Secor machines you were engaged in selling? You had the pattern business and you had the machines of the Wilcox & Gibbs Company?

A. Yes, sir.

Q. Had you in any business other than the merchandise that goes with the sewing-machine?

A. No, sir.

Q. Your pattern business was in the same store with Wilcox & Gibbs' machines?

A. Yes, sir.

Q. And the Secor machines were in a different store?

A. Yes, sir.

The COURT: Connected with it?

Mr. MACVEAGH: No, sir; another locality.

Q. Where was the Secor store?

A. The corner of Eighth and Walnut. Wilcox and Gibbs had been at 720 Chestnut street. About the time the new machine was made I moved to 1127 Chestnut street, or just prior to that. I fitted up the store with special reference to the new machine.

Q. In 1875 you said the total amount of your business was thirty thousand and some odd dollars?

A. By Wilcox & Gibbs; yes, sir.

Q. Have you your other business of that year?

100 A. Yes, sir; I stated my total of other sales was $7,275.22.

Q. That included what?

A. That included all other machines, I think, except the Wilcox and Gibbs.

By the COURT:

Q. And the patterns?

A. The patterns are not included in that estimate.

Q. Have you any estimate of your business in the patterns?

A. I have not with me.

Q. What would you guess it would be?

A. About as I stated.

Q. I asked you about the profits. I want the gross sales as you have given us in this case.

A. In the neighborhood, I should say, of $5,000 a year; $4,000 or $5,000 a year.

Q. Did that run evenly or did it vary?

A. It varied somewhat.

Q. In 1876 you give the total amount of sales for the Wilcox & Gibbs at $48,760.48.

A. Yes, sir.

Q. Give us the outside sales that year—sales of other sewing-machines.

A. $1,449.88.

101 Q. In 1877 you give the total amount of our sales as $35,936.46. Give outside sales that year.

A. $1,898.97.

Q. Have you the amount you paid the Wilcox and Gibbs Company during those years—the price of their goods billed to you?

A. My books would show it; I haven't it here, excepting this. All the goods I bought I paid for at maturity.

Q. What other machines had you been selling in 1875, 1876, and 1877?

A. All the old machines that were taken in exchange, and to some extent Secor machines, so long as they had any sale. The company failed, and what machines I had on hand, some of them I still had on hand, not very many, for I did not have many at the time. They had declined to fill my order, or at least were unable to fill my order, by reason of the closure of the factory; so that I had but very few of the Secor machines on hand.

Q. Do you remember at the time this contract was made about your promise not to buy any more Secors if you got out of the lot you had?

A. I know there was no such promise made.

Q. You did not go on buying Secors after what date?

102 A. After the date of their failure. I think it was somewhere about in the year of 1875, probably; I think so.

Q. Will you name the other sewing-machines, as far as you can recall, that was sold in the years 1875, 1876, 1877?

A. It would be an assumption that I sold nearly all that were in the market.

Q. They were second-hand machines?

A. Yes, sir.

Q. You sold no new machines but the Secor?

A. Not those years; I think not. I won't say fully, for the reason when I sent for the Wilcox and Gibbs Sewing Machine Company to open this office, Eighth and Walnut, it was with the understanding of selling the other machines with which the Wilcox & Gibbs did not infringe. In addition to the Secor machines I did sell other makes of machines—the Wheeler & Wilson and other prominent makes.

Q. Previous to what year?

A. All the time that office was open at Eighth and Walnut.

Q. When did you close that office?

A. It was not until after the failure of the company; I think in 1875; it may have been later. Dates are somewhat peculiar to my mind.

103 Q. In 1878 you began to deal in the New Home machines?

A. I think the first supplies of the New Home machines were in 1877.

Q. What time?

A. The latter part of the year.

Q. In 1878 you dealt in them very considerably?

A. Yes, sir; throughout the country.

Q. In 1878 how many of our machines, old and new, did you sell?

A. $21,102.93.

Q. In that year how many of New Home machines did you sell—New Homes and the others?

A. $41,858.87.

104 Q. What others? Did you sell new machines in that year? You have given us New Home $47,561.85 and old $697.42.

A. That was in 1879.

Q. In 1878 you gave New $40,540.42 and old $138.45?

A. Yes, sir.

Q. Those were *agin* the second-hand machines—the old taken in exchange for other machines?

A. Yes, sir.

Q. In 1879 how many of our machines did you sell?

A. $14,531.51.

Q. How many of the New Home?

A. All other machines, $48,259.27.

Q. Of which $47,561.85 represent the New Home and $697.42 represent other second-hand machines?

A. Yes, sir.

Q. Had your sales of patterns increased during this period?

A. I think not.

Q. And you think that will run $45,000 a year or more?

A. Probably about that.

Q. Your books will show?

A. Yes, sir.

Q. Look and let us see what your sales were in 1878 and 1879 of patterns and also all other parts of merchandise. These figures you gave, I understand, are confined to the machines?

A. Yes, sir.

105 Q. You say that most of the New Home were sold at wholesale?

A. Yes, sir.

Q. And therefore the amounts you have given us are the amounts you received at wholesale, of course, from your books?

A. The amounts that I should receive.

Q. Now, will you give us the actual number of machines for those two years?

A. That I couldn't do, possibly, I think, without a great deal of labor.

Q. What difference was there between the wholesale and retail price of the New Home? What was the discount on the New Home?

A. Of course, discounts vary.

Q. About what? What did they average?

A. Probably about fifty per cent. off.

Q. Give us your best estimate of how many more New Home machines you sold in those two years than you sold of the Wilcox & Gibbs. First begin with 1878.

A. I should say between two and three times as many in 1878 and 1879, taking those two years together.

Q. You spoke yesterday of sending the New Homes mostly into the outside territory, but did you not in your advertisement put them side by side?

A. No, sir; that would depend on what you mean by "side by side."

Q. I mean on an equality with each other?

106 A. No, sir; not at all; at no time.

Q. Do you recognize the advertisement I now show you having been inserted by you in the papers of this city (showing a newspaper clipping)?

A. Yes, sir; that is the advertisement that was put in.

Q. By you?

A. Yes, sir.

Q. Do you recognize that as the circular that was issued by you (showing a paper)?

A. Yes, sir.

Q. And that is a lithograph of your letter (showing paper)?

A. Yes, sir. I understood your question "side by side" to apply to their position on the floor.

Q. I spoke of advertising; but still it is your right to give your explanation.

A. I understood your question that way. As far as the advertisements are concerned, they often appeared in connection.

Q. You spoke about the Secor Machine Company having closed probably in 1875. Just look at that and see if that does not refresh your recollection that they closed in 1874—early in 1874. (Paper shown witness.)

A. This is dated 1874.

Q. I say, does it refresh your recollection?

A. It does not refresh my recollection at all.

Q. You have no memory on the subject? Do you know
107 now whether it was in February, 1874, or in 1875 that the Secor Company failed?

A. I don't know; they may have closed that factory more than once.

Q. Do you remember receiving a letter from the company, asking whether your new location was or was not the office of the Secor machine, when you were fixing your store at 1127 Chestnut street?

A. I have no recollection of it.

Q. And of their expressing the hope that you were not thinking of joining the sale of two machines from one store? I will show the

letter; it is in evidence here. Just look at that first letter and see if you remember that. (Letter shown witness.)

A. It is ambiguous, the letter is. I can hardly understand it. (Reading from letter:) "Is not your new location the office of the Secor Company, 1127 Chestnut street?"

Q. Is there anything ambiguous about that?

By the COURT:

Q. Do you recollect now receiving the letter?
A. I do not recollect the letter; no, sir.

By Mr. MACVEAGH:

Q. Do you recollect your answer to it?
A. I do not recollect it. It will speak for itself, of course.

Q. Perhaps if you look at the press copy of your answer
108 you will remember it?

(Mr. MacVeagh shows witness letter-press copy of letter of July 15th as follows:

"D. S. Ewing, Esq.:

Is not your new location the office of the Secor Company, No. 1127 Chestnut street? We hope you do not think of joining the sale of two machines from one store.

Yours, —— ——, *Secretary.*")

Mr. JOHNSON: It is your letter, of course.

By the COURT:

Q. Is that your letter?
A. Yes, sir; that is my letter.

By Mr. MACVEAGH:

Q. It is an answer to the letter I showed you or purports to be?
A. Yes, sir.
Q. And this is the reply to that?
A. Yes, sir.

(The letters just referred to are letter of July 15, from the company to Ewing; July 16, being reply of Ewing to the company, and July 18, from the company to Ewing in reply, all of 1874.) The letters are set out below, pp. —.

The WITNESS: That was prior to the formation of the new contract.

109 (Mr. MacVeagh here reads the advertisement and circular identified by witness.)

The advertisement & circular are set out below, pp. 227–229.

Re-examined by Mr. JOHNSON:

Q. What was the difference in the operation—I do not mean in detail, but the general salient difference in the operation of the Home and of the Wilcox & Gibbs?

A. The result of the two machines was entirely different; the one is lock-stitch and the other is chain-stitch.

Q. Are they competitive machines in the market—that is, do they meet the same demand?

A. Not at all so.

Q. Why not?

A. The New Home machine is similar to the Singer class; the Wilcox & Gibbs is a speciality in the market, having a certain demand which no other machine can satisfy; they rarely ever come into collision.

Q. There is a difference between the old contract and the new contract; the contract will speak for itself, and there is no use in your explaining it. Was there any conversation before the new contract was entered into on the subject of the sale of other machines?

Mr. MacVeagh: I object.

Mr. Johnson: This is after the letters and before the contract. I propose to prove that subsequently to the writing of
110 those letters, which went upon the basis of the old contract, where he was to devote his time, and anterior to the making of the new contract, they conversed upon the subject of his selling other machines if the new contract was made.

Objected to; objection overruled; exception for defendant.

Q. Was there a conversation concerning your sale of the new machine after the correspondence about the Secor? That, I think, was in May, 1874.

Mr. MacVeagh: July 16, 1874.

By Mr. Johnson:

Q. And before the contract was signed was there any conversation concerning your selling other machines?

A. There was.

Q. With whom?

A. Mr. Parmley.

Q. What was it?

A. He had made a formal demand on me for the return to the company of all my rights in certain country territory. I asked him on what terms he proposed to take that territory, as it had stood me a large amount of money. He said that he did not propose to give anything for it. I told him then that I could not entertain any idea of giving it up without consideration. He then said that he would put on the screws and force me, and then declined to fill my orders for machines.

111 Mr. MacVeagh: I move that this last part of the testimony at least be stricken out.

The Court: Yes; that may be stricken out.

By Mr. JOHNSON:

Q. Come to where the conversation took place as to selling other machines.

A. Mr. Parmley then proposed finally to adjust matters. If I would yield the territory he would make a new contract with me, giving me specific terms for the new automatic machine. That was just prior to the contract.

Q. I want to limit it to what was said on the subject of selling other machines. I want to ask this question: Was there a conversation before—I don't want the conversation, I want yes or no—was there a conversation with Mr. Parmley after the Secor letters were written and before the new contract was made concerning your selling other machines?

A. There was.

Q. Something was said in these letters that were written about your not paying the bills or something of that sort. Have you got a statement of your assets and liabilities there?

The COURT: At what time?

(Question withdrawn.)

WILLIAM H. WINTER sworn.

By Mr. JOHNSON:

Q. Where do you live?

112 A. 1421 North 16th street.

Q. Did you at any time buy a Wilcox & Gibbs sewing-machine?

A. Yes, sir.

Q. When?

A. 1878 and 1879, the first ones I bought.

Q. 1878 the first and in 1879 the others. How many in all?

A. Bought six in 1878. In the whole year of 1879 we bought 21.

Q. From whom did you buy?

A. The Wilcox & Gibbs Sewing Machine Company.

Q. Where?

A. Bought some, I think, from their agent in Philadelphia, or their representative came from New York, and the balance we bought in New York.

Q. Do you know the name of the representative?

A. Mr. Lassell was the agent that came to see us.

Q. What was your business then?

A. Manufacturing of straw goods.

Q. Mr. Lassell represented himself as the agent of the company, and came over to Philadelphia and sold these machines in 1878?

A. I cannot say. He sold six in 1878, but he sold in 18.9.

Q. In all—in 1878 and 1879—you bought 27 sewing-machines?

A. Yes, sir.

Q. Did you buy at a discount from the rates?

A. No; without a discount.

113 Q. And how did those goods reach you?

A. Came by railroad, freight, express.
Q. Direct from the New York office, did they?
A. Yes, sir.
Q. Did you go to New York to buy, or did you buy by solicitation?
A. I went to New York and bought some there.
Q. How many of the 27—any considerable quantity?
A. Not many.
Q. The bulk were bought by the solicitation of the agent coming over here to see you?
A. Yes, sir.

Cross-examined by Mr. MACVEAGH:

Q. You have no very distinct recollection about it, have you?
A. I know I bought machines from Lassell.
Q. And you know you also bought in New York?
A. Yes; and I bought in Philadelphia.
Q. But you could not give any definite division of the figures by recollection now?
A. No, sir.
Q. You used these in what?
A. Manufacturing straw goods.
Q. They were what you call straw machines?
114 A. Yes, sir.
Q. A special machine for that purpose?
A. Yes, sir.
Q. Not used for anything else?
A. Not that I know of. I know we did not use them for anything else.
Q. They were a special machine for that special work?
A. Yes, sir.
Q. Sewing straw?
A. Sewing straw goods.

By Mr. JOHNSON:

Q. They were a Wilcox & Gibbs machine, however?
A. Yes, sir.

Mrs. AMELIA J. PARKER sworn.

By Mr. JOHNSON:

Q. Where do you live?
A. 1629 North 19th street, Philadelphia.
Q. What is your business?
A. Manufacturing straw goods.
Q. Did you buy at any time before 1880 any Wilcox & Gibbs sewing-machines?
A. In 1879, I think.
Q. How many did you buy?
A. Ten.
115 Q. From whom did you buy?

A. Mr. Lassell.
Q. He came to Philadelphia, did he, to solicit your order?
A. Yes, sir.
Q. And how did they come to you?
A. By freight.
Q. From New York directed to you?
A. Yes, sir.
Q. And from the office in New York?
A. Yes, sir.
Q. Did you buy them at the retail price or at a discount?
A. Retail price.
Q. Do you remember what the price was per machine?
A. $75.

(No cross-examination.)

GEORGE PHILIP MUELLER sworn.

By Mr. JOHNSON:

Q. Where is your residence?
A. 1710 North 6th street.
Q. What is your business?
A. Manufacturing straw goods.
Q. Did you purchase, in 1878 or 1879, any goods from Wilcox & Gibbs Sewing Machine Company?
116 A. No, sir.
Q. When did you buy first?
A. The first I bought was January, 1880.

(No cross-examination.)

SAMUEL C. PARIS sworn.

By Mr. JOHNSON:

Q. Where is your residence?
A. Haddonfield, New Jersey.
Q. Where is your place of business?
A. No. 3 South 5th street at the present time.
Q. Did you at any time, in Philadelphia, in 1878 or 1879, purchase any Wilcox & Gibbs sewing-machines?
A. I bought one in the spring of 1879 and ten in the fall of 1879.
Q. Were they bought in December, 1879?
A. No; they were purchased after that, as near as I can remember.
Q. From whom did you buy?
A. Mr. Lassell.
Q. Did he come here to solicit your custom?
A. Yes, sir.
Q. And when you got the machines where did they come from?
A. Direct from Wilcox & Gibbs' office in New York.
117 Q. Directed to you?
A. Yes, sir.

Q. Were these straw-making machines?
A. Yes, sir.
Q. You bought them, I suppose, at the retail rate?
A. $75 each.

Cross-examined by Mr. MacVeagh:

Q. Have you any accuracy of recollection—not that I regard it as important—as to the date in 1879 when you bought the ten machines?
A. I judge it was in the month of September, I think. I am not positive about that.
Q. But was not the first one in the month of April, 1879?
A. Yes, sir.
Q. And was not the other—you may be able and you may not be able to recollect now; you will state your best recollection—was not the other purchased as late as December 30th, 1879?
A. I cannot remember. I have been out of business since 1881.
Q. I know you have. I want to see whether you can remember.
A. No, sir. I was under the impression it was previous—September or October.
Q. But you have no definite recollection about it?
A. No, sir.

By Mr. Johnson:

Q. Did you get them immediately after you bought them
118 or was there some delay?
A. I judge there was a few days' delay.

Joseph Potter sworn.

By Mr. Johnson:

Q. What is your business?
A. Straw goods manufacturer.
Q. Living in Philadelphia and doing business here?
A. No; living in Camden.
Q. And doing business in Philadelphia?
A. Yes, sir.
Q. Did you buy any Wilcox & Gibbs sewing-machines in 1878 and 1879?
A. Yes, sir.
Q. When?
A. In 1878.
Q. How many?
A. To the best of my knowledge, about fifty.
Q. And in 1879?
A. I couldn't say how many.
Q. Could you give me an estimate?
A. Maybe 20 or 30. I couldn't say.
Q. From whom did you buy?
A. Mr. Parmley.
Q. Where did you buy?

A. In New York.

Q. You went to New York, did you?

A. Yes, sir.

119 Q. Did Lassell call on you?

A. Several times; yes sir.

Q. And was it in pursuance of this call that you went to New York?

A. No, sir; I always had direct dealings with the house in New York.

Q. Did you have direct dealings with them before Lassell called on you?

A. Yes, sir.

Q. Then what was the object of his call?

A. I suppose whenever he was in town he would call to see whether he could do any business with us.

Q. Had you previously done any business with Wilcox & Gibbs?

A. Before seeing Lassell?

Q. Yes, sir.

A. Yes, sir.

Q. You had bought?

A. Yes, sir.

Q. And did you buy anything after Lassell called?

A. Yes; he used to call once in awhile while we were buying.

Q. Then, though you were buying directly from Parmley, Lassell was still calling between whiles to see you?

A. Yes, sir.

Q. Then, after his calls, you bought in New York?

A. Yes; whenever we bought we bought in New York.

Q. Were those goods furnished at any discount?

A. I don't know.

120 Q. Try to recollect.

A. In 1878, I think, we paid $65. I believe so.

Q. In 1879 you paid what?

A. I couldn't say. The price went up on the machine.

Q. We will take 1878, when you bought fifty. $75 was the retail price, was it not?

A. I don't know what the retail price was.

Q. Cannot you recall sufficiently to be able to tell what you bought by discount?

A. We bought the machines at $65, I believe.

Q. Do you not think that was a discount from the retail rates?

A. I do not know what the retail rates were. I heard them say $75.

By the COURT:

Q. You heard them at that time say so?

A. No, sir; I have heard now.

By Mr. JOHNSON:

Q. At any rate, you were buying for $65, and the goods were

shipped directly from the New York office to you here in Philadelphia?

A. Yes, sir.

Cross-examined by Mr. MACVEAGH:

Q. Did you not know perfectly well at the time that the company had but one price on the machines for everybody? Were you not told that?

A. I couldn't say.

121 Q. Did you not know that you did not get any favor from them over any other purchaser of the machine? Had they not a fixed price that they sold to everybody at?

A. I did not know that they were selling machines here in Philadelphia.

Q. But in New York, in your dealings with them, had they not the fixed price of $65 on these machines in 1878—on the French machine in 1878?

A. I believe they had.

Q. And were not the American machines at $75?

A. Yes; I think it was, sir.

Q. And then advanced up to $100 and $125?

A. Yes, sir.

Q. And $150?

A. Yes, sir.

Q. And still higher?

A. Yes, sir.

Q. Up to $200, did they not run?

A. I believe they do.

Q. You bought the French machine?

A. We bought some French

Q. The first purchase you paid $65 for?

A. Yes, sir.

Q. You bought some double feeds at $90, did you not?

A. I might have done it in 1879: not in 1878, I do not think.

Q. Did you not buy some American in 1878 during the same period?

122 A. No, sir.

Q. In 1879?

A. I think all the machines in 1878 were $65.

Q. French machines?

A. I suppose they were all French machines. I don't know.

By Mr. JOHNSON:

Q. They were Wilcox & Gibbs machines?

A. Yes, sir.

By Mr. MACVEAGH:

Q. They were a special machine for the straw business?

A. Yes, sir.

Q. Your dealings were exclusively with the New York office, in New York?

A. Yes, sir.
Q. For machines for the straw business?
A. Yes, sir.

By Mr. JOHNSON:

Q. How many was the first batch you bought?
A. That I couldn't say. We had three or four invoices in 1878. I think the machines amounted to 52 machines altogether.
Q. Did not Lassell's call in 1878 antedate the purchase of a good many of the 52 machines?
A. I will not be sure that Lassell called in 1878.
Q. What is your best recollection?
A. I never kept any date. He called two or three different times. He used to come in at different times.

123 GEORGE PHILIP MUELLER recalled.

By Mr. JOHNSON:

Q. I asked you whether you made any purchases in 1878 or 1879, and you did not remember anything but 1880. Have you got some bills there?
A. Yes; I have two bills. It slipped my memory. The transactions were most all done by my partner—these two. Most of these transactions were by my partner, and these slipped my memory—these two bills. One is New York, January 11, 1879, Messrs. G. P. Mueller & Co., Philadelphia, Pa., bought of Wilcox & Gibbs Sewing Machine Company, 658 Broadway, four American straw machines, at $75, $300; and there is a credit by cash, $150. Three of the above were delivered by Mr. Lassell and one by Adams' Express.
Q. That is all part of the original bill—the three delivered by Lassell?
A. Yes, sir.
Q. How did Lassell deliver them?
A. Lassell came over and talked the matter over, and we finally agreed to take some of them, and Lassell took the order and sent it by express.
Q. There is another bill here: "New York, June 24, 1878, Messrs. G. P. Mueller & Co., Philadelphia, Pa., bought of Gibbs Sewing Machine Company (terms net cash), one straw machine, single feed, net $65, via Adams' Express." Was there any discount on that?
A. No, sir.
Q. What was the "net," do you know?
124 A. That means for what we purchased it.
Q. Those goods were purchased by you?
A. Purchased by us.

By Mr. MACVEAGH:

Q. You are in the straw business also?
A. Yes, sir.

Q. This was the same kind of a machine—straw machine?
A. Yes. The first machine was single feed; the other was what we call double feed.

JOSEPH POTTER recalled:

(Witness produces the following bills:)
New York, January 11, 1878.—Messrs. Potter Bros., Philadelphia, Pa.: Bought of Wilcox & Gibbs Sewing Machine Company, Broadway, cash one-half, 22 straw machines, single feed, at $65, $1,430; via Adams' Express. Six of the above sent January 10.
Bill—"New York, July 1st, 1878.—Messrs. Potter Bros., Philadelphia, Pa.: Bought of Wilcox & Gibbs Sewing Machine Company, 658 Broadway, 15 straw machines, single feed, at $65, $975"—then the numbers of the machines—via Pennsylvania railroad June 29.
Bill—"New York, November 12, 1878.—Messrs. Potter Bros., Philadelphia, Pa.: Bought of Wilcox & Gibbs Sewing Machine Company, Broadway, 17 straw machines, single feed, at $65, $1,105; one straw machine, double feed, $90, $1,195 via Adams' Express."
125 Bill—"September 12, 1878.—Messrs. Potter Bros., Philadelphia, Pa.: Bought of Wilcox & Gibbs, net cash, two straw machines, single feed, $65, $130; via Adams' Express."

By Mr. JOHNSON:

Q. You have no 1879 bills?
A. No, sir.

(In answer to Mr. Johnson Mrs. Amelia J. Parker and William H. Winter state that they have no bills here.)

HOWARD C. YONKER sworn.

By Mr. JOHNSON:

Q. Were you in the employ of Mr. Ewing at any time?
A. I was.
Q. In what capacity?
A. As cashier.
Q. How long?
A. Since June, 1878.
Q. I wish you would tell the jury what was done there in the way of selling the Wilcox & Gibbs sewing-machine.
A. When I went to Mr. Ewing the Wilcox & Gibbs sewing-machine was the machine that was principally represented. All of the ladies on the floor attended and were engaged to sell the Wilcox & Gibbs sewing-machine; the instructresses were especially engaged for that machine. The Wilcox & Gibbs machine was
126 on the floor in front of the store. It was urged upon every customer who came into the store. All of the business principally was done in the Wilcox & Gibbs sewing-machine. That was the machine which Mr. Ewing was known through the city as the representative of.
Q. There were large quantities in 1878 and 1879 of New Home

machines sold. Tell the jury what efforts were made to sell them, and whether or not efforts were made to sell them, or what efforts were made to sell them in competition with the Wilcox & Gibbs.

A. The efforts that were made to sell the New Home sewing-machine were by traveling agents throughout the State of Pennsylvania and part of New Jersey and some adjacent places, and they were sold at wholesale prices to dealers of sewing-machines throughout the State.

Q. Was there a retail department for the purpose established in that store prior to 1880?

A. There was not.

Cross-examined by Mr. MacVeagh:

Q. All of the Home machines, then, were sold at wholesale prices?

A. Not all.

Q. Why did you not state that when you made your statement?

A. I said they were principally so.

Q. You did not say that. You said they were sold at
127 wholesale prices. How many were sold at retail prices?

A. I don't know.

Q. You were cashier.

A. Yes, sir.

Q. Where are your books?

A. Here.

Q. Let us know how many were sold at retail prices in 1878. You can find out from the books.

A. Yes, sir.

Q. Your business as cashier was to keep the books?

A. Yes, sir.

Q. To make out bills, keep all accounts, and keep all the books?

A. Not all of the accounts; no, sir. As cashier I had not all to do with the accounts of the ledger.

By Mr. Johnson:

Q. You did keep the books that have got the retail sales in?

A. Yes, sir.

By Mr. MacVeagh:

Q. Those books will show the territory in which these machines were sold?

A. Yes, sir.

(The court directs the witness to furnish the information from the books as soon as possible.)

128 Henry T. Mooney sworn.

By Mr. Johnson:

Q. You were in Mr. Ewing's employ?

A. Yes, sir.

Q. And you are yet?

A. Yes, sir.
Q. How long have you been in his employ?
A. 22 years last September.
Q. In what capacity, shipping clerk?
A. Shipping clerk; yes, sir.
Q. State whether there was any delay in the delivery from New York of orders for the Wilcox & Gibbs machine.
A. Yes, sir.
Q. What do you know about that?
A. I know on several—a great many—occasions prior to 1879 the delay was very often.
Q. Between what dates?
A. I have not the dates.
Q. Up to that date?
A. Up to that date.
Q. Tell us what was done in Mr. Ewing's establishment in the way of pushing the Wilcox & Gibbs and the New Home.
A. The Wilcox & Gibbs was on the front of the floor—down in front—and the saleslaadies were all employed for that business on that floor. We had no other saleslaadies there, only those that sold Wilcox & Gibbs.

129 Cross-examined by Mr. MacVeagh:

Q. Do you remember at the time of seeing this advertisement of Mr. Ewing (showing witness advertisement)?
A. No, sir.
Q. You did not know the New Home had the front place in the advertisement?
A. I did not.

JOSEPH F. BROOMALL sworn.

By Mr. JOHNSON:

Q. What is your business?
A. Sewing-machine business.
Q. Did you call at any time at Mr. Ewing's store for the purpose of engaging in the sale of sewing-machines?
A. Yes, sir.
Q. Tell us what took place.

(Objected to by Mr. MacVeagh as irrelevant. Objection overruled. Exception for defendant.)

A. Yes, sir; I called.
Q. What time was it?
A. May, [illegible].
Q. What took place?
A. I was taken there by another man engaged in the business, who induced me to start in the sale of sewing-machines. He took me there to look at the New Home sewing-machine; he thought that was the best machine.

130 Q. What took place between you and Mr. Ewing?

A. I saw Mr. Ewing in regard to the price of the sewing-machine; he named the prices. I bought the machine out and out; did not consign the machine.

Q. What else?

A. I did not negotiate at the time; I called later. We made an arrangement. I bought some New Home machines. He asked me if I did not think I could do something with the Wilcox & Gibbs New Automatic, as they had a large sale for it. I told him I could not reach that class of trade as a canvasser; that the bulk of the trade demanded a lock-stitch machine. He said he would send them to me on consignment; offered me a greater inducement to sell them than the New Home.

Q. Did he send any on consignment?

A. Yes, sir.

Q. What happened with regard to them?

A. After I had them on the floor a short time a driver called for them; Mr. Ewing sent for them, and requested me to let the man have the machines.

Cross-examined by Mr. MacVeagh:

Q. You did not sell any of the Wilcox & Gibbs then?

A. Yes; I sold what I could.

Q. How many did you sell?

A. I am not prepared to say.

Q. About how many?

A. I couldn't tell how many; I never did much business
131 in that machine.

Q. Can you not give us some estimate of what you sold? You remember this conversation so well.

A. No, sir. I did not take any particular interest in that machine; could not reach the class of trade that demanded that machine.

Q. How many New Homes did you sell that year?

A. I suppose I sold that year in the neighborhood of 150.

Q. Can you not give us some idea of how many Wilcox & Gibbs you sold?

A. No; I cannot; very few.

Q. How few did you sell?

A. I am not prepared to say.

Q. Where are you living?

A. 4112 Market street.

Mr. Johnson: We close.

Daniel S. Ewing recalled for cross-examination.

By Mr. MacVeagh:

Q. I want the books containing the accounts of merchandise received June 27, 1865, debited to you and credited to the ledger account and the credit to the party from whom the merchandise was then coming to the Philadelphia office.

A. I have an account of June 30th.
Q. That is the ledger (referring to book in hand of witness)?
A. Yes, sir.
132 Q. Now the account before that?
A. There is no account before that.
Q. You have this of June 30th?
A. Yes; the close of the month.
Q. What is the first item on the credit side of the account?
A. Credit Fairbanks and Ewing, $1,003.88.
Q. What is the next item?
A. $21.77.
Q. And the next?
A. What date?
Q. July 8th or 10th.
A. It is made up here by months. The month of July there is a credit of $4,169.94. These books were not kept by myself.
Q. What is the total?
A. $4,169.94.
Q. For August?
A. $5,126.16.
Q. Have you not the items that make up the month of August?
A. No, sir; not here.
Q. Where would they be found?
A. Interspersed through the journal, I presume?
Q. September?
A. $524.37.
Q. Turn me to the final termination of this account.
A. James Wilcox terminated in April, 1866, and then commenced Wilcox & Gibbs Sewing Machine —, in 1867.
133 Q. Where is this carried to?
A. This is carried to May, 1867.
Q. Where is that?
A. Here it is (indicating on book).
Q. I show you a book produced by you, marked "W. & S. S. M. Co." on the outside, and on page 1 beginning account of James Wilcox, debtor and creditor, 1865, the entries beginning June 30, 1865, and ending April 30, 1866. The last entry on the debit side under date of April 30, 1866, is what?
A. Wilcox & Gibbs Sewing Machine —, $17,599.50 balance.
Q. Is or is not the balance, $17,599.50, transferred to the next page, on the credit side?
A. Yes, sir.
Q. It was used on the former page to balance the account?
A. Yes, sir.
Q. On page 2 the account begins on the credit side April 30, 1866, and on the debit side May 31, 1866. The last entry on the debit side is of May 14, 1867?
A. Yes, sir.
Q. What is that entry of May 14, 1867?
A. "Two sundries, $25,650.09."
Q. Does that balance the account?

A. That balances the account.

Q. To what do the figures "201" in the column opposite refer to?

A. To the last page of the journal, I presume, of that date.

Q. Have you the journal here?

134 A. Yes, sir.

Q. Let me see that journal entry.

A. Debtor to cash, Wilcox & Gibbs Sewing Machine Company, $25,198.48. This (indicating) is the sundries and this (indicating) is the cash.

Q. Where is the other entry?

A. I do not know. I presume it is a matter of merchandise.

Q. From the amount you gave of $25,650.09 to the debit of the New York house there was, was there not, deducted at that time a bill for papering the new store? Did you not receive an allowance for one-half the bill for papering the new store?

A. I had no account for papering the new store.

Q. Were you not made an allowance for the expense of fitting up the new store?

A. On my books?

Q. At any time.

A. My books do not show any account at all, to my knowledge.

Q. I am not asking what the books show. Did you not know yourself that there was such an allowance when you gave your receipt of 1867?

A. I do not know.

Q. Do you recall how that papering matter was?

A. Yes, sir; some of it.

Q. Tell what you recall about it.

A. Mr. Wilcox ordered the papering to be done at the store, 720 Chestnut street, together with many other repairs, amounting altogether to $8,000, all of which were charged, as I understand,

135 to the Philadelphia office. This paper-hanging bill amounted to about double the price that was agreed upon, and, if my recollection serves me, Mr. Wilcox contested it and put it in suit, and judgment was recovered against Mr. Wilcox. That was no part of my affair and was not introduced on my books.

Q. But as a matter of fact was there not an allowance of $352.11 made to you on account of the papering?

A. I don't know why it should have been. I have no recollection of it.

Q. At 720 Chestnut street?

A. I have some recollection about their charging an account against the house which I had no memorandum of, and it may have been adjusted as you say. Those were facts so long ago I cannot recall them.

Q. Turn to the ledger again. You have already given a few of the items of the account on page 1 and page 2 of the ledger and the last item on the debit side. I wish you would state what the substance of this account is, what it was intended to represent as put in your ledger.

A. The first item on this credit and debit side to James Wilcox is, as I understand, the price that he paid Fairbanks and Ewing for the loss of good will, amounting to $2,500, and the other items are for findings, for sundries, and cash. The final settlement made on May 14 charged to sundries $25,650.09, part of which cash was charged or credited with $25,198.48; that amount was charged to the company.

136 Q. The difference represents the difference of what was received and what was paid to New York during this period?

A. I fail to see here some things that I know were incorporated in the account; that of the reparation of the store for the business; I fail to discover that here. As I say, these books were not kept by myself, and I do not understand why it does not appear here. There was a matter of about $8,000 charged to the Philadelphia office for the making over of the store and furnishing it for the business.

Q. But those accounts involve the merchandise received from New York and the moneys paid, do they not?

A. I suppose so; yes, sir.

(Mr. Johnson offers in evidence the circular and advertisement identified by Mr. Ewing; also the receipt of February, 1877; also all the letters which were read.)

(Mr. MacVeagh says the letters were put in before.)

(The court states that reading the letters puts them in evidence.)

HOWARD C. YONKER recalled for cross-examination.

By Mr. MACVEAGH:

Q. Turn to sales in the first instance to persons in the city of Philadelphia at wholesale of the machines for the first three months of 1879. For the present just confine yourself to the period of time from the first of January to the last of March, 1879, showing sales of both kinds of machines.

137 A. (Witness refers to book.) I will give you each account as I come to it.

Q. What is the first one?

A. The account of B. F. Gilbert.

Q. That is the first of the dealers you show me?

A. Yes, sir.

Q. Just run down and tell the New Homes and the Wilcox & Gibbs sold there and the prices—that is, whether they are new or old machines; that will do better.

A. There were six New Home machines.

Q. Where did this man live?

A. Germantown.

Q. And how many new Wilcox & Gibbs?

A. There were none.

By the COURT:

Q. Was that a sale of the New Home machine to a dealer by wholesale?

A. Yes, sir.

By Mr. MacVeagh:

Q. Turn to the next. Who was he?
A. James F. Cannon.
Q. Where is his residence?
A. 332 Girard avenue; six New Homes; no Wilcox & Gibbs. These are all at wholesale I am calling now.
Q. These are all dealers; they are all in the same place in the book. That is correct?
A. Yes, sir.
138 Q. Who was the next?
A. J. M. Engle, 938 North 2nd street, 13 New Homes. Did you want the old style Wilcox & Gibbs?
Q. I do not care for the old style of either; they seem to be a very small fraction; they seem to be sold at $15. If I want them afterwards you can give those. Give any new Wilcox & Gibbs.
A. J. F. Broomall, 4076 Market street, 25 New Homes.

By Mr. Johnson:

Q. These are all to dealers?
A. Yes, sir.
Mr. MacVeagh: I am going over the dealers.
The Witness: Thomas D. Moore, Frankford, 4 New Homes; Thomas Lee, 2276 Frankford avenue, 10 New Homes; William Parker, 1526 North 4th street, one New Home; James D. Ramsdale, 1113 Chestnut street, 3 New Homes; E. Murray, 2044 Callowhill street, 5 New Homes; A. Priestly, 1111 Spring Garden street, 3 New Homes; Joseph T. Hallowell, 2015 Parrish, 2 New Homes; Thomas J. Holton, 334 Girard avenue, 8 New Homes; J. H. Hood, 210 Girard avenue, 1 New Home; E. Widmer, 442 Susquehanna avenue, 1 New Home. I am giving the wholesale for all of the three months to the 1st of April. George Phillips & Co., 1007 Spring Gar-
139 den street, 5 New Homes. Now we come to the dealers out of the city at wholesale.

By the Court:

Q. What month is that in?
A. The whole three months.
E. P. Morris, White Haven, two.
Henry H. Robinson, Tylersport, five.
B. F. Horner, Bridgeton, five.
J. T. Zimmermann, Millville, one.
John L. Black, Chambersburg, two.
H. S. Stick, Glenville, three.
Caleb Brown, Coatesville, one.
Benjamin Burt, Greencastle, two New Home and one Automatic.
C. G. Treichler, Honeybrook, one New Home.
Charles Sheetz, Keller's Church, two New Homes.
Lewis Keller, Bedminsterville, seventeen.
Ira Thompson, Vineland, four.
J. L. Molloy, Carlisle, one.

John G. Lewis, Reading, eighteen.
L. C. McFarland, Downingtown, three.
J. M. Bergstrasser, Saxton, eleven.
D. S. Barr, Lancaster, two.
John H. Thomas, Huntingdon, one.
H. J. Judd, Mt. Holly, ten New Homes and one Automatic.
140 John J. Van Hagle, Royer's Ford, two.
Pennell King, West Chester, twelve.
B. Newman, New Bedford, one.
John S. Brindley, Shafferstown, one.
O. B. Seagrist, Lebanon, one.
Frederick Shields, Ruggles, Pa., one.
Platt & Warren, Jacobstown, N. J., one.
E. R. Lucky, Rutland, Pa., one.
J. J. Smith, Quakertown, three.

(At this point the witness was requested to make up during the recess a list of how many machines were sold.)

(Recess until 2 p. m.)

2 P. M.

By Mr. MACVEAGH:

Q. What have you done since the adjournment of the court?
A. I have gone over the books and found out how many New Home machines were sold at wholesale and how many at retail from January 1st, 1879, to April 1st, 1879. There were 315 machines sold at wholesale and there were seven sold at retail.
Q. In Philadelphia?
141 A. Throughout the territory.
Q. In those three months?
A. Yes, sir.
Q. That includes the lease book?
A. Yes, sir.
Q. Have you that here?
A. Yes, sir.

(At the request of counsel witness produces same.)

Q. Here, for instance, is the account of the New Home sewing-machines sold at retail, including only those sold on instalments.
A. Those machines were sold on instalments.
Q. Therefore it does not include any fully paid for in cash at the time?
A. They may have been paid for at short time.
Q. But I mean any person going in and buying a machine and paying for it in cash. Does not that appear here?
A. No, sir.
Q. How many New Home machines were sold here in Philadelphia at retail in the month of December, 1877, for instance?
A. Not any.
Q. What are these (indicating)?
A. Those are machines that were leased, for which we received the wholesale price.

142 Q. Leased on December 1st, 1877?

A. Yes, sir.

Q. That is, when they were fully paid they belonged to the purchaser?

A. Yes, sir.

Q. And therefore sold at retail price?

A. They were sold at retail price to the purchaser.

Q. How many such machines were sold in this city in the month of December, 1877?

A. 18.

Q. Then there were 18 machines sold at retail in the one month of December, 1877? Were all of them in this city, or how many of them?

A. One in Camden; that is the only one.

Q. And the other seventeen in this city?

A. Yes, sir.

Q. Can you give us an explanation of how only seven were sold in the three months of 1879 and there were eighteen sold in one month in 1877?

A. Those machines—there were eighteen machines sold in December, 1877—were sold by general dealers in sewing-machines, for which we received the wholesale price. The same took place in 1879.

Q. That is, they were sold by certain salesmen?

A. They were general dealers in sewing-machines.

143 Q. Who was Burkhard, for instance?

A. Burkhart was a man who canvassed sewing-machines.

By the COURT:

Q. What do you mean by that?

A. He canvassed for anybody; sold machines.

By Mr. MACVEAGH:

Q. Did he sell for you? Did he sell any other machine in competition with the New Home machine?

A. I don't know that he did.

Q. You do not know that he did not?

A. No, sir.

Q. And you do not know that he did?

A. No, sir.

Q. How about Thomas B. Moore?

A. He is a general dealer and has a store at Frankford for the sale of machines.

Q. Turn to the list which you gave this morning of wholesale sales and see if they are in, these same parties. Are they?

A. They are not; no, sir.

Q. Then you gave us what purported to be the entire wholesale sales this morning?

A. No, sir; I beg your pardon. I stopped before I got through the book.

Q. Turn to the book now and show where the sale to
144 Charles Parr on the 6th of December, 1877, is. In the first place, I will ask you to state what the transaction really was and with whom this contract was made. Who held this lease of the machines that were payable on instalments?

A. Which lease?

Q. The lease given for any one of these instalment machines.

A. We did.

Q. They were contracts with you to pay the full retail price of these machines?

A. Yes, sir.

Q. The commission was allowed to the man who made the sale?

A. Yes, sir.

Q. The canvasser?

A. Yes, sir.

Q. And the entire business was transacted in your name between you and the purchaser?

A. No, sir.

Q. How was it?

A. The transaction was primarily conducted between the purchaser and the agent—the salesman.

Q. The transaction; but the paper?

A. The paper was conducted by the dealer who handed it
145 to us.

Q. The contract was in your name?

A. The contract was in our name.

Q. It was made by him and in your name?

A. Yes, sir.

Q. You had not gotten through the first three months of that book, as I understood?

A. No, sir.

Q. Point out among the wholesale dealers the name of E. Salter, for instance. Did any one of these salesmen occur in the list of wholesale dealers?

A. Yes, sir.

Q. For instance, here is E. Salter, who bought machines on the 3rd of January, 1879?

A. (Referring to book:) E. Salter, 807 South 20th street.

Q. How many machines did you give up as bought by him before the first of April, 1879?

A. I think not any.

Q. As a matter of fact, he did get machines in that time?

A. Before that, yes, sir; certainly. You are taking the three months.

Q. This morning you were taking the three months of January, February, and March?

146 A. January 3rd, 1879, machine to E. Salter. The salesman sold to Mrs. Mary Kessler, 2336 Ellsworth street, for $80.

By the COURT:

Q. Where did you find that?

A. It does not appear in this book; it is in the other book.

Q. What relation does that book bear to this? Why is it not in that book?

A. They are two distinct books.

Q. How are they distinct?

A. This book is kept as a general ledger for when we receive cash at once or personal notes, from whoever we receive them.

Q. Then what is the other called?

A. That is a book in which we keep the instalment account?

By Mr. MACVEAGH:

Q. You did not, however, this morning, intend to tell us how many machines had been sold upon the instalment plan?

A. I made no reference at all to the facts as to how many machines had been sold.

Q. Tell us how many machines were sold in those three months on the instalment plan. You say there were 123 New Home machines sold on what is called the instalment plan in the three months?

147 A. Yes, sir.

Q. Carried on your books at full retail prices?

A. To the purchaser?

Q. Yes.

A. Yes, sir.

Q. And of those 123 how many were outside of the city of Philadelphia?

A. Fourteen.

Q. Then there — seven more sold from the store at full retail prices, of which you have already given an account?

A. Six of them that we had the cash for and one that is on this book, that we sold from the office.

Q. So there were six more; 129 in all. Tell us how many Wilcox & Gibbs machines were sold in those three months. Could you give an estimate?

A. No, sir.

Q. How many New Home machines were sold altogether by Mr. Ewing, in any form, in the three months from January 1 to April 1, 1879?

A. 322.

Q. How do you divide those?

A. 315 at wholesale and 7 at retail.

Q. And do the 315 at retail that you gave include these instalment machines?

148 A. Yes, sir.

Q. You had not mentioned any of those when we adjourned?

A. No, sir.

Q. How many had you given us when we adjourned?

A. I don't know.

Q. How many more did you get after we adjourned?

A. I couldn't tell, because I didn't know how many I had before.

Q. How did you ascertain this number of 315?

A. I ascertained it from the journal.

Q. The total number of machines that went out?

A. Yes, sir.

Q. But, as I understood you to say just now in reply to a certain inquiry, you did not, in reading off the wholesale list this morning, include any of those?

A. I did not.

Q. Nor were any of those found in the remaining pages of this book?

A. No, sir.

Q. Can you not give me how many you did find in all in this book (indicating)?

A. I didn't go through that book.

By Mr. JOHNSON:

Q. You did not even finish that book?

A. I was interrupted before I got through.

149 By Mr. MACVEAGH:

Q. And therefore you have not that?

A. I have not that.

Q. See how many there are in this book. Finish you examination of the ledger of 1879, D. S. C., and give us the total of New Home machines sold in those three months.

A. Well, I think I can give it to you from the difference between the lease books; there were 199 in the ledger.

Q. Can you not as promptly from the journal tell us how many Wilcox & Gibbs machines were sold in the first three months of 1879?

A. I can by going through it.

By Mr. JOHNSON:

Q. What is the distinction in selling at wholesale, whether you sell on the instalment plan or whether you sell for cash?

A. When we sell at wholesale to sewing-machine dealers we either get cash or his individual note for the bill. When we sell on instalment—when a general dealer sells a New Home sewing-machine for Ewing—he takes the lease instead of the salesman's individual note.

Q. And does Ewing get the full retail price or does the
150 dealer get the full retail price when sold on instalment?

A. Neither.

Q. Who does?

A. The purchaser pays the full retail price. Mr. Ewing gets the wholesale price.

Q. It is just a different mode of selling?
A. Yes, sir.
Q. Were the whole of those 315 machines sold by Ewing to customers or were they sold to general dealers in sewing-machines?
A. To general dealers in sewing-machines.

By Mr. MACVEAGH:

Q. Do you distinguish between general dealers and customers? Were there not people, as you have already said, who were canvassing for sewing-machines, and then there were general dealers, were there not?
A. The general dealers are men who have stores; the canvassers are men who go around canvassing for sewing-machines from house to house.

By the COURT:

Q. What proportion were sold by canvassers and what proportion by general dealers?
Mr. MACVEAGH: Of those sold on the instalment plan?
151 A. I should suppose not more than half a dozen of them were sold by canvassers.

By Mr. MACVEAGH:

Q. What is the difference in keeping the account between keeping a general dealer's account in the large ledger D. S. C. and in the instalment book?
A. The account in the ledger, as a rule, is closed at once by either cash or note.
Q. Is it a matter of fact that exactly the same amount of money comes to Ewing, whether he sells on the instalment plan and takes the risk of the note or whether he sells to the dealer at a retail rate?
A. Mr. Ewing when he sells for cash sells at a certain price.
Q. What price? Your book shows it there?
A. Yes, sir. Well, there is a difference in the machine. The average machine is $24.
Q. That is, to the wholesale dealer who buys and pays?
A. Yes, sir.
Q. What does Ewing net on a machine that is sold on the instalment plan for $50?
A. If the machine is paid for entirely by instalments he nets $34.
Q. Does he not get it all really in the first instance? Is it not all paid to him?
152 A. No, sir.
Q. Have you a copy of the lease there?
A. No, sir.
Q. Does the lease provide for any payment to the agent? They are all paid to Ewing, are they not?
A. No, sir.
Q. How are they paid?

A. The dealers collect the money and deduct their commissions and turn the balance over to Ewing.

By the COURT:

Q. That is a part of their contract, that they are to collect?
A. Yes, sir.

By Mr. MACVEAGH:

Q. Is the instalment price the same as the retail price?
A. That is the retail price.
Q. You sell for the same price on instalment as you do to one who comes in and pays cash at the store?
A. No, sir.
Q. What difference is there?
A. Ten dollars.
Q. Ten dollars more on the instalment plan?
A. Yes, sir.

(The witness is requested from the journal to ascertain the number of Wilcox & Gibbs sewing-machines sold in the three months referred to.)

Evidence closed.

Adjourned until Wednesday, April 18th, at 10 o'clock a. m.

153 APRIL 18TH, 1888—10 a. m.

Mr. Johnson, counsel for plaintiff, makes an address to the jury.

Mr. MacVeagh, counsel for defendants, makes his closing address to the jury.

During his address Mr. MacVeagh stated that there was one piece of testimony which he desired to get in at that time, upon which Mr. Johnson, if he saw fit, could comment.

The testimony referred to was as follows:

HOWARD C. YONKER recalled.

By Mr. MACVEAGH:

Q. The number of new Automatic in the three months from Jan. 1st to April 1st, 1879, sold was 46, and of the old style 61?
A. Yes, sir.
Q. Of the old style about how many were second-hand machines?
A. I couldn't say.
Q. They were both second hand—the new and the old style—not the Automatic?
A. Yes, sir.

154 *Agreement, &c., Admitted in Evidence.*

This agreement, made and entered into between the Willcox & Gibbs Sewing Machine Company, a corporation established in the city of New York, of the first part, and Daniel S. Ewing, of the city of Philadelphia, of the second part, witnesseth:

That the agency of the first party for Philadelphia and vicinity has been heretofore conducted by the second party, and a settlement of the accounts thereof has been made, whereby all the assets of the said agency have been transferred in fee to said second party, and, in view of said settlement and to secure the interests of both said parties in the business, it is agreed, for considerations mutually satisfactory to both parties, as follows:

First. Said first party hereby agrees to furnish to the second party such Willcox & Gibbs sewing-machines as he may order, at a discount of forty per cent. from its present price-list, so long as said list remains unchanged, and three dollars per machine in addition to said forty per cent.; and whenever a change in price is made due notice thereof is to be given to said Ewing, and a discount is to be made based upon the cost of the machine to the said first party then and the retail price then, which shall bear the same proportion which the above discount and three dollars per machine does to the present cost and retail price. Parts of and attachments to machines are to be furnished at a discount of forty per cent.
155 Cabinet-work, needles, and any attachments which may cost said first party more than sixty per cent. of its retail price are to be furnished to said second party at net cost.

Second. The party of the second part, in consideration of the premises, agrees to continue the business now established in the city of Philadelphia of the sale of the Willcox & Gibbs sewing-machines, and to devote his entire time and business energy to the advancement and improvement of said business, and to the increase of the sale of said machines, and in good faith to devote himself to the improvement of said business as fully and energetically as he has during the last year; and so long as he faithfully does so, and in good faith keeps at least the sum of twenty-five thousand dollars actively employed therein, the said first party is hereby bound to continue and, in equal good faith, carry out all the provisions hereof.

Third. The party of the first part will convey by proper writing to the second party, for the purpose of carrying into effect the provisions hereof, the lease of the premises No. 720 Chestnut street, Philadelphia, in which the business is now carried on, to be used for the purposes herein stated.

Fourth. In consideration of the premises, and so long as the said Ewing shall faithfully perform this contract on his part, he shall have the exclusive sale of the Willcox and Gibbs sewing-machine, its attachments and parts, in the following territory, to wit, the State of Pennsylvania, except the counties of Susquehanna, Wayne,
156 Monroe, Luzerne, Columbia, Montour, Bradford, Tioga, Warren, and Erie; also all of the State of New Jersey lying south of the north line of Mercer county, and that part of West Virginia which is supplied from Pittsburgh and Wheeling, definite lines of such territory to be hereafter mutually agreed upon on this basis, and said first party will, as soon as they conveniently can, add thereto such parts of Ohio as receive their supplies from Pittsburgh or Wheeling; but said first party reserves the right to sell their sewing-

machines and accessories at their retail prices only to go into such territory.

Fifth. The agency, or, in other words, the interest, in the Willcox and Gibbs sewing-machine business hereby conveyed to said second party is not to be sold or assigned by him without the first party's consent, but such consent is to be given if the party is acceptable to said first party. All bills are to be paid to the party of the first part within thirty days from date thereof.

Dated at the city of New York this 16th day of May, 1867.

EDWARD P. HATCH,
[SEAL.] *Secretary Willcox & Gibbs S. M. Co.*
D. S. EWING.

In presence of—
S. CHITTENDEN.
ED. B. WILLCOX.

156½ N. Y., *May* 16, '67.

Received from Daniel S. Ewing, of Philadelphia, twenty-five thousand three hundred and ninety-eight $\frac{48}{100}$ dollars, which is the balance due this company from the Philadelphia office to the 15th inst., the payment of which by the said D. S. Ewing transfers to him all our interest in the stock, fixtures, book ac., &c., of said office.

$25,398.48. WILLCOX & GIBBS S. M. CO.
ED. B. WILLCOX, *Treas.*

157 *Mem. of Agreement.*

It is hereby understood and agreed that from this fifteenth day of October, 1874, a new agreement is to be entered into between Willcox & Gibbs S. M. Co. of New York, first party, and Daniel S. Ewing, of Philadelphia, Pa., second party, and a contract is to be made in accordance with the understanding between them in the main as follows:

The first party will set apart to the second party, under usual conditions, the city of Philadelphia and ten miles around the city hall of said city (and with permission to sell in all former territory until such time as the first party shall form direct connections there) for the exclusive sale of first party's machines, etc.

The first party will extend second party's note, $10,000, due Jan. 25, 1875, for one year from said date.

The first party will bill to second party its sewing-machines and parts thereof at 60 per cent. discount from New York retail price-list, and needle attachments at its lowest wholesale rates, all bills to be paid in cash 30 days from date of same.

In consideration of above the second party agrees to purchase during the year 1875, in equal monthly parts, at least $20,000, net, worth of goods, pay for them as stated above, and to make said new contract, the making of which, it is hereby understood, shall nullify all former contracts and agreements made prior to the date first written above.

Above is substantially our mutual understanding of what
158 the new contract is to be.

WILLCOX & GIBBS S. M. CO.,
By J. PARMLY, JR., *Secretary.*
D. S. EWING.

159 This agreement, made and entered into this fifteenth day of October, one thousand eight hundred and seventy-four, by and between the Willcox and Gibbs Sewing Machine Company, a corporation duly organized under the laws of the State of New York, of the first part, and Daniel S. Ewing, of the city of Philadelphia, Penn., of the second part, witnesseth:

The first party hereby appoints, subject to conditions hereinafter expressed, the second party its exclusive vendor for its sewing-machines, parts and attachments, in and for the following-named territory, to wit: The city of Philadelphia, Pa., and the adjacent country lying within a radius of ten miles from the city hall of said city. The second party hereby accepts said appointment. The first party will sell for the present to second party its sewing-machines and parts thereof at 60 per cent. discount from its present New York retail price list, and its needles, attachments, silk, and cotton at its lowest wholesale rates. In the event of a change (the liberty to effect which is not herein intended to be restricted) in retail prices or of a general revision of discounts by first party the second party is to be as favorably considered then in the readjusting and fixing of discount rates to him as is extended to him on present basis of prices. All bills owing from second to first party shall be paid in cash 30 days from date of same. The first party will not knowingly supply its goods at a discount to go within the limits
160 of territory hereby assigned; but the first party reserves the right always to sell its sewing-machines, parts and accessories, at full retail rates to go anywhere. The established retail prices of first party are to be maintained for retail trade, and the second party is bound to sustain them and will bind all subvendors or agents of his to sustain said established retail prices. Second party will be allowed to fill orders from any locality at full list rates, but trade must not be solicited by his connivance or consent in the territory of other agents, and discounts or any equivalent device therefor must not be allowed in any form on articles herein specified permitted to go out of his own territory. Machines or parts, needles or attachments, counterfeiting, infringing, or in any degree trespassing upon ours nor in any effect trading upon our name must not be dealt in nor countenanced by second party, but it is hereby agreed that his time, attention, and abilities must primarily be devoted to the forwarding of the interest of the party of the first part. If, for any reason, at any time the connection hereby formed shall cease the first party shall have the right to buy back of its goods sold to second party all such goods as first party may select, first party to pay therefor the same prices as charged second party.

Second party agrees to purchase from first party during the year

1875 at least $20,000, net, worth of machines, parts and
161 accessories, to be taken in equal monthly parts and to be paid for as stated herein. Violation of the spirit of this agreement shall be sufficient cause for its abrogation. Permission is granted second party to trade in all former territory occupied by him until such time as first party shall form other connections for occupying the territory not contained in that designated therein as belonging to second party.

And it is agreed and understood that this appointment or agency is not salable or transferable by second party without obtaining the written consent of first party, but such consent is to be given providing the purchaser or other person is acceptable to said first party. First party consents to renew and extend second party's note, $10,000, maturing January 23–26, 1875, for one year from said date, without interest, upon consideration of this agreement alone. All contracts or agreements made prior to the date first written above are hereby nullified and satisfied.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

WILLCOX & GIBBS S. M. CO. [SEAL.]
J. PARMLY, JR., *Sec'y.* [SEAL.]
D. S. EWING.

Sealed and delivered in the presence of—
Witness:
J. A. SWART,
As to sig. of J. Parmly, Jr.
F. A. STURGIS,
As to sig. of D. S. Ewing.

162 (Endorsed:) Received, New York, Feb'y 15, 1877, the sum of four hundred and twenty $\frac{52}{100}$ dollars, making the discount up to 55 per cent. on all goods received by me since the revision of discounts in August, 1875, same amount being in full for all claims or demands for arrears of discounts, allowances, or any other claims I may have up to date hereof. In consideration whereof I also now confirm the within contract, admitting the company's right to revise discounts or prices as *is* its judgment it may deem proper and just, in conformity with the within contract.—D. S. Ewing.

163 *Erving's Price-List, Dec., '77.*

1127 Chestnut St., Philadelphia.

DEAR SIR & MADAM: I solicit your critical judgment of the Willcox & Gibbs "New Automatic," also of the "New Home" (lock-stitch) sewing-machines.

I pronounce each machine to be the best of its respective class.

Very truly, D. S. EWING.

No. 2. Plain table, with one drawer	$70
No. 4. Table, with cover and one drawer	75
No. 5. Half case, three drawers, and side leaf	80
No. 7. Full cabinet case	100

N. B.—For full cash payment a discount of $10 will be made from above prices. For punctual payment of all ten-dollar instalments at this office 10 % discount will be allowed.

Style.	(Sketch of machine.)	Price.
No. 5.		$80

Outfit.—Each machine is furnished with a narrow hemmer (which is also the feller), hemmer nut, quilter, gatherer, guide and screw, a dozen needles, needle wrench, oiler filled, and a book of directions.

Features.—The finish of this machine is of the highest possible grade, and is fully nickel-plated. It has an automatic device for measuring off a proper length of thread for each stitch, a stitch indicator, a positive feed, and a knife-edge treadle movement.

D. S. EWING,
1127 *Chestnut Street, Philadelphia.*

No. 1. Plain table, with one drawer	$40
No. 2. Table, with cover and one drawer	45
No. 4. Half case, two drawers, and side leaf	50
No. 5. Half case, four drawers, and side leaf	55

N. B.—For full cash payment a discount of $10 will be made from above prices. For punctual payment of all five-dollar instalments at this office 10 % will be allowed.

Style.	(Sketch of machine.)	Price.
No. 5.		$55

Outfit.—Each machine is furnished with a hemmer and feller, braider, quilter, two throat plates, screw-driver, gauge and screw, shuttle, six bobbins, set of needles, oil can, bottle of oil, and a copy of directions (any language).

Features.—This machine is very light running and quiet; has a self-setting needle, a device for winding bobbins without turning the machine, an index dial for regulating the stitch to any given length, and other novelties.

D. S. EWING,
1127 *Chestnut Street, Philadelphia.*

165 *Sewing-Machines.*

"The New Home" is the best lock-stitch sewing-machine in the world.

No. 1127 Chestnut street.

It combines all excellencies.
It is quiet and light running.
It is thoroughly finished.
It is sent upon trial free.
Prices made to suit the times.

Two new sewing-machines.

A single thread		A double thread
The New Automatic	&	"The New Home"
The aristocratic		The democratic
The highest finish		The lowest price.

Of its class The best Of its class.
D. S. EWING, 1127 Chestnut street.

166 *Letters.*

N. Y., *August 11th*, 1875.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: We shall commence the sale of the new machine on Monday, Aug. 16th, and will accept orders and deliver goods on that date. The retail prices remain the same (except that the No. 2 machine will be $60 instead of $56), notwithstanding the many great improvements added to and the increased cost to us of our machines.

After mature consideration we feel obliged to announce changes in our discounts, and we hand you a list (on other side) of our newly established rates. You will see by it that you are still specially favored in the adjustment of rate to you. We hope to hear from you soon that it is satisfactory to you, and we are of opinion that all agents who shall handle this new machine (so well received wherever tested) will find in it profit and pleasure in doing the business.

Can we not now reasonably expect a larger business in your department? Let us hear your views.

Yours, &c.,
(Signed) J. PARMLY, JR., *Treas.*

167 N. Y., *Aug. 11th*, '75.

To D. S. Ewing:

Mem. of New Rates on Machines & Parts.

Wholesale terms to agents where we are not represented.

1 machine	No discount.		
2 machines	25%	"	3 mos. note & 5% off for cash.
3 do.	30%	"	
4 do.	35%	"	
6 to 8 machines	40%	6 mos. note & 10% off for cash.	

We do not sell to dealers where we are represented.

Manufacturers' rates of discount:

10% to 25%, according to number of machines in use; should have at least 6 machines to get extreme discount.

Needles, to dealers & agents, $4 per hun.

to manufacturers, $3 per hun.

Machines exchanged (head only, and to be in good condition and with all parts and attachments), $30 retail. Wholesale rates, say, $20.

"Special" to D. S. Ewing:

Machines & parts, 50% disc't, cash.

Machine heads exchanged (if new and with all new attachments), $15, cash.

168 N. Y., *Aug* 13*th*, 1875.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: Yours of 12th received; will send the 300 hooks, new style, when either the heel of hook or under part of plate can be filed a little upon long-stitch manufacturing machines. Upon regular machines no change is needed, but upon the manufacturing machines a little adjusting is perhaps necessary. We prefer always to have the plate filed than to have the hook changed any. One filing of the plate lets all hooks fit, but the other way each hook must be filed.

We do not make the old-style hook any more. Your order was for the 300, conditional upon our making the old-style for you; hence this order could hardly be considered as given on the date named. However, we are not disposed to be captious, and will fill the order at your late rate of discount, as we see clearly this is the point you make and it is your wish.

Yours very truly,

(Signed) J. PARMLY, JR., *Treas.*

169 N. Y., *Aug.* 14*th*, '75.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: A reference to our contract will show you that we reserved the right "to change prices and revise discounts." We have exercised this right, and we sent you a copy of our new rates, and in reply we have yours of 13th inst., clearly showing you are under misapprehension. Suppose our best former rates to have been 50% discount and you receiving 60% discount, you will see that your rate of discount was a rate 20% better than others received.

Now, by the new rates, 40% is the best rate named, and to give you a rate of discount 20% better would entitle you to 48%. We thought to favor you even beyond the strict letter of the contract, and we named 50% discount for you. This should have been perfectly satisfactory to you, and we think it will be upon further reflection. We can poorly afford to be generous beyond what is required of us by our contracts, but in this case we did go beyond requirements, and we named to you at once our lowest rate, specially

to you, that you might feel that we did not intend to be too stringent. We shall accept your order of 13th on the 16th, subject to the discount named, fifty per cent., unless otherwise directed by telegraph from you on Monday, 16th inst., and will ship you the goods as soon as possible. We have no No. 5 wood-work of Grove's make, and do not know that he has this style in stock; have seen samples of it and rejected it as not being as well made as our own. However, if he has the style made up, and you like it better than ours, and will accept it from him without inspection or guarantee from us, we will order the cases delivered to you by him. We cannot answer for his delay if he has to make them up. Your reply by wires on Monday is very desirable.

Yours, &c., J. PARMLY, JR., *Treas.*

170 PHILADELPHIA, *Aug. 16th*, '75.

Willcox & Gibbs S. M. Co., 658 Broadway, N. Y.:

Please ship machines at contract prices without delay. Letter to-day.

D. S. EWING.

171 NEW YORK, *Aug. 16th*, '75.

D. S. Ewing, 1127 Chestnut St., Phila.:

Dispatch not definite enough. Will not ship machines to-day.

WILLCOX & GIBBS S. M. CO.

172 PHILA., *Aug. 16th*, 1875.

Messrs. Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: I telegraphed to you to-day as follows: "Please ship machines at contract price without delay," and have received in reply: "Dispatch not definite enough; will not ship machines to-day." I observe by the Tribune that you are already offering the new machines for sale in New York, Brooklyn, & Jersey City, and it is very damaging to my interests not to have them here. My order of 13th inst. and my telegram of to-day are as explicit as I could well express them in the English language.

The only point at which you can stumble at all is with reference to the cabinet-work. With regard to that I will add that I have ever found the work supplied by Wm. H. Grove, Esq., to be thoroughly satisfactory to myself and to my customers, and I will accept your order upon him for the work I have ordered from you.

Very respectfully, D. S. EWING.

173 PHILADELPHIA, *Aug. 16th*, 1875.

J. Parmly, Jr., Esq., treas. W. & G. S. M. Co.

DEAR SIR: I have occasion to thank you for your very temperate letter of 14th inst., and shall seek in reply to be no less courteous. Allow me to briefly review the circumstances which led to the execution of the present existing contract. I was quite well satisfied with the terms of the original contract of May, 1867, until you ad-

vised me that it made no difference to the "new" machine, and that you might fix an arbitrary price therefor, and further threatened to determine forthwith the line of credit to which I was justly entitled, unless I would relinquish, without other consideration than the terms a new contract would afford, certain valuable territory for which I had paid to the company a considerable sum of money.

Anxious then as always for an amicable adjustment of every matter of difference between us, I consented to yield and relinquish to you all my right, title, and interest in said territory, provided that a suitable and satisfactory line of discount and of credit would be guaranteed to me in the future prosecution of my business. After a mature consideration of the subject you proposed to fix my rate of discount for the new machines and parts at 60 % and
174 to regulate my line of credit by the net amount of goods I should purchase upon the basis of one dollar of credit for every two dollars of purchases. I accepted in good faith your proposition upon your distinct and emphatic avowal that no change should be made in these terms except for a sufficient and justifiable cause—as, for instance, the absolute necessity for a reduction in the retail prices of machines or an increase not anticipated in the cost of them—and that in any such event I should be "as favorably considered" with respect thereto as was then proposed under the existing prices. The only material changes since the signing of the contract having been a reduction in the cost of the complete machine and an advance in the retail price (say from $56 to $60), I submit that there is as yet no occasion to justify an increase in the price to me, and I respectfully protest against the addition of 25% to my bills.

Not to dwell upon my rights under the contract and the assurances you have given me, upon the strength of which I have brought other capital than my own into the business, I would remind you that in the present condition of the trade it is impossible to do a profitable business upon the basis of terms submitted except I moderate very considerably my office and other business expenses. Canvassers here for the "Singer," "Howe," "Wheeler & Wilson," "Weed," and other sewing-machines receive 45%
175 upon leases and 50% upon cash sales, and I am advised by yours of the 11th inst. that you propose to allow 40% & 10% to dealers who purchase even 6 or 8 machines at a time. I want supplies of the new machines at the earliest possible moment, but want them, of course, at living rates.

Very respectfully, D. S. EWING.

176 N. Y., 17*th Aug.*, '75.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: Your letter of 16th assumes propositions which never entered into the making of your contract, so far as we are concerned. Our contract marked a "departure" from old disputes which we do not care to reconsider. Into it we had inserted the protection clauses which we have put in operation. If you can see no reason in our changes we admit it is quite natural, since you are

the buyer and we the sellers. If our positions were reversed we should see differently. However, this does not affect rights. Twelve machines will go to you to-day, and wood-work is ordered to you from Grove. The bills will be made at 50% discount, and unless accepted by you you will please return the machines to us, handing us B. L. for them. We cannot advise you to competition with the rates quoted. We don't do it, and there is no money in it to those who do.

Yours truly, J. PARMLY, JR., *Treas.*

177 PHILA., *Aug.* 18*th*, 1875.

Mr. J. Parmly, Jr., treas. Willcox & Gibbs S. M. Co.

DEAR SIR: Your favor of 17th inst. is at hand. Your frank avowal that "if our positions were reversed" you would accept my view of the situation is certainly very candid and truthful—in fact you could not be honest with yourself and do otherwise. You are very far from being correct, however, in your assumption that you may now or at any time "exercise the right" to establish an arbitrary rate of discount to me and without even a pretext for so doing. If I am bound by the contract and yet am afforded no protection under it I have indeed been despoiled through ambiguous terms. But such is not the case.

The instrument was made for the mutual benefit and protection of both parties to it and had special reference to the "new" machines which were at that time under process of manufacture. These were to have been ready for the market "not later than the 1st of April" last. To-day I am advised that you have sent me the first lot of 12 machines, but you have invoiced them at 25 % above contract prices. I cannot accept your bill as "correct" without acknowledging your right to advance your prices to me at your option, thus ignoring the contract altogether.

Yours very truly, D. S. EWING.

178 N. Y., *Aug.* 19*th*, '75.

D. S. Ewing, 1127 Chestnut St., Phila., Penn.:

In view of your letter, we request immediate return of new machines.

J. PARMLY, JR., *Treas.*

179 PHILA., *Aug.* 20*th*, 1875.

Mr. J. Parmly, Jr., treas. Willcox & Gibbs S. M. Co.

DEAR SIR: Having large and diverse interests at stake in the prosecution of my business here, and having suffered already much inconvenience, mortification, and damage from the long delay of the "new" machine, and being impelled also by fairness to the general stockholders of the company, the value of whose investments should not be impaired or hazarded by either you or me while we pursue an unprofitable controversy, I have concluded to advise you that I will pay for all goods ordered as hitherto and according to the terms of the contract, and that any excess which you may de-

mand thereupon I will also pay in full, though under protest. You will therefore please ship to me 12 No. 5 machines on Monday next and 12 (instead of 24) No. 5 machines on Monday, Aug. 30th instant.

Let me add to what I have already said that I filed with the contract at the time it was executed your "explanation" of the very point under discussion. Then, as you represented, the prices were not to be changed unless an "urgent necessity should arise," and in the event of any changes terms to me were to be continued "relatively the same." Then, as you stated, the best terms given to large dealers were "50% cash." Now, as you advise me, those who buy even 6 or 8 machines at a time get "40% and 10% cash," equal to 46%, an advance of 8%, whereas to me you propose 25% advance.

If you can reconcile this discrepancy, be so good as to tell me by what process of reasoning.

Very resp.,

D. S. EWING.

180

N. Y., *Aug.* 21*st*, '75.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: In reply to your letters of 20th inst., say we could not in justice to this company or to our possible successors in office proceed in an arrangement where you paid "under protest" the just claims of this company. If we cannot agree in our business relations, having full knowledge of the facts, certainly a stranger to the facts would be infinitely puzzled to go on harmoniously.

Ours of the 14th fully explained our terms and how your rate was fixed. We neither give nor offer 40 & 10. The best rate we name is 40% disc't, and having made the sale on time will discount the paper for 10%. When we sold for 50% off the same rule was in practice, and sometimes even higher rates were allowed rather than take the risks, but we never then counted the risks discount as a part of the sales discount, nor can we have it so understood now. We trust you will withdraw your protest and admit our bills as rendered, otherwise we must request the return of goods already sent you until the adjustment can be accepted. We deplore the position we are in just as the new machine is launched, and must add that we feel we are being very materially injured and damaged by each day's delay in your work of opening up the trade
181 in your city. We must hold you responsible for this loss, for we acted in strict accordance with our contract, gave you all (and more disc't than) it required, and because you were not satisfied we have this untimely discussion forced upon us. We offer you better terms than any one else and the best we can afford. If at any time we see our way to making your discount larger we should be glad to do it, but at this time, before proceeding any further, we should have our rights acknowledged by you and all apprehensions of future controversy put at rest.

We remain, dear sir, yours truly,

J. PARMLY, JR., *Treas.*

182 "Confidential."

N. Y., *Aug.* 21*st*, '75.

D. S. Ewing, Esq.

DEAR SIR: I should do violence to my feelings if I did not ack. your letter of 20th to me and say that it was wholly unexpected. I believe honest differences will always exist and be manifested in any business connection running through year after year, as ours has done and must do, and I strive always to let my personal feelings have the least to do with any business affairs I am called upon to transact for this company. I can say here what would not answer in official correspondence, and that is that you know very well—as well as if you had the secret bills of this Co. to figure from—that at 60% discount we should lose money on each machine we sent you.

Now, in all candor I ask if I, as its executive officer, have any right to dispose of its property at such rates, or if you as a stockholder and the representative of a large body of such, drawn into it through your own persuasion, have any right to receive goods at such prices or any reason in asking us to sell at such prices? Do you think if I felt the Co. could make money and sell its goods at 60% that I should try to make sale of them at 40% disc't? Would stockholders be satisfied with a report next Jan. that 30,000 new machines had gone out and our debt has quadrupled? I think you
183 and every other one would rather hear of 10,000 sold (or less) and money enough made on these to pay them a dividend. Well, then, it's just in this line I am working. I want to make money on my sales to you and to others to divide back to you and your friends. I wish you might bid your self-interest stand aside this time and see the justice of our position. I know money can be made in handling the Automatic at your figures, and I beseech you lose no time in idle strife with this Co., but put forth your best efforts without delay and reap your golden harvest.

In confidence, sincerely yours,

J. PARMLY, JR.

184 PHILA., *Aug.* 24*th*, 1875.

Mr. J. Parmly, Jr.

DEAR SIR: Since you have been so good as to write me an unofficial letter, expressive of kindly feelings, I will unburden my mind a little more freely than I have yet done; not with a view to prolong the discussion, however. Let me say, then, that I fully appreciate the very trying position you hold and the importance you manifestly feel of marking out and pursuing a "prudent policy;" and, more, I heartily commend your efforts to re-establish the business upon a paying basis, nor have I any disposition to complain that in the "revision of discounts" an exception is not made in my case.

I neither ask or desire to reap benefit of, while I confer none upon, the company. All I contend for is fairness and proper consideration. If the terms of my contract afford the company too little "margin" I may not be unwilling to yield it up and accept

one upon another basis, but I cannot allow it to be treated as already a dead letter. An advance of 25% to me and of only 8% to others is certainly in direct violation of the spirit, and the letter also, of the contract. It does not meet the objection to say that "10% for cash payment is no part of the discount allowed to agents." You might with equal propriety, to-morrow, state your terms to be
185 "30% discount and 20% for cash payment," an equivalent really to 44% cash, in which event my line of discount should be 52½% and not 36%, as your method of showing would make it appear. I cannot divest myself wholly of "self-interest," as you would have me do, for it is only by protecting my own interests that I can care, as I ought, for the interests of others committed to me, and it was upon the basis of the contract, as I understand it, that my arrangement for capital was effected. It is hardly reasonable to expect that I should be able to do a profitable business upon 50%, while sub-agents are to receive from me 40% & 10%, equal to 46%.

The report of your Boston agent at the last annual meeting was to the effect that it cost full 60% to do the business of that house, the office expenses of which were somewhat less than my own. Moreover, the entire capital of that house is at the risk of the company. I deplore exceedingly any occasion which my friends may have to regret their investments through me, and all the more so because of their uniform kindness and consideration. Nevertheless the company, as such, has special reason to thank me, if not for its very existence to-day, yet certainly for much of its capital and for some of its most worthy and efficient men. I rendered the company a service in 1872, which, under the same circumstances, I would most cheerfully do again, for I acted in the utmost good faith and never was more conscientious in my work. I
186 feel, therefore, that your argument from this stand-point is altogether untenable. I am not bound in the interests of the general stockholders to sacrifice myself, yet I may say that I am quite unwilling to stand in the way of their highest prosperity here or elsewhere. One point more. Your inability to show net profits arises from the disproportion of the aggregate of sales to the amount of general expenses incurred, and not to an inadequate margin upon each sale. This is true at each of your "branches;" it is true also of my business here.

Why should you, therefore, to make good your losses at Boston or elsewhere, increase those of mine here? When favorable times return again we will all prosper accordingly. I have looked forward to the new machine with "great expectations," and I sincerely trust that it may soon be demonstrated that agents can work successfully upon old-time discounts; then will all stockholders be amply compensated for their patient waiting.

I may do myself the honor of calling upon you in the course of a few days. With much respect, I am

Yours very truly, D. S. EWING.

187 PHILA., *Aug. 27th*, 1875.

Mess. Willcox & Gibbs S. M. Co., 658 Broadway, N. Y.

GENTLEMEN: Please ship to me on Monday, Aug. 30th instant, say, 24 No. 5 sewing-machines; price at $70. I will pay in full, according to the terms of contract, all your bills as rendered, reserving the privilege of obtaining subsequent corrections should any errors occur therein.

Your prompt attention to the above order will greatly oblige,

Yours very truly, D. S. EWING.

188 N. Y., *27th Aug't*, '75.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: We to-day order the 12 No. 5 wood-work from Grove to you, and at end of month will send you 24 No. 5 machines complete (wood-work from Grove). All these goods to be charged to you 50% discount from our N. Y. list prices.

You will please send in orders for any other goods needed. We pray you lose no time in giving the new machine its "send off" in your city. We are large sufferers already by the delay, and are impatient to an extreme to know of its progress with you. Duplicate orders are already coming in to us, and we feel sure business can be done and money made with the "Automatic."

Yours truly, J. PARMLY, JR., *Treas.*

189 PHILA., *Aug. 28th*, 1875.

Mess. Willcox & Gibbs S. M. Co.

GENTLEMEN: In addition to the 24 sewing-machines I ordered yesterday you will please ship to me by rail 3 No. 5 sewing-machines complete; price at $70. Let the cabinet-work of these 3 come direct from New York. If they are in anywise better than those obtained from Mr. Grove I desire to know the fact and to call Mr. Grove's attention thereto.

With much respect, I am yours truly,

D. S. EWING.

190 N. Y., *Nov. 3rd*, '75.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: From Nov. 1st and until further notice machines & parts will be billed to you at 55% discount from our present N. Y. retail price-list.

Are sure this will be a welcome change to you, and we hope it may serve as a fresh stimulus to push your trade. We are agreeably surprised to find in these dull times our trade increasing at all our branches and agencies, and we feel more liberal as we feel more encouraged that with our new machine we shall have a final grand success. We wish you much profitable business during the coming winter.

If you could make it convenient to anticipate some part of your payments (Oct. 15th bill, $447; 25th, $350; 30th, $840) we shall be

glad to allow you interest for such anticipated time, and the money will do us much good. Would like what you can spare, say, by Nov. 10th.

Yours, &c., J. PARMLY, JR., *Treas.*

191 PHILA., *Nov. 4th*, 1875.

Mr. J. Parmly, Jr., treas. Willcox & Gibbs S. M. Co.

MY DEAR SIR: I am favored with yours of 3rd inst., and I note what you say with much satisfaction. I am especially glad to know that you are impelled to increase your rate of discount to agents by reason of "a full measure of success," and not from the lack of it.

The cheerful tone of your letter is very encouraging to me, and I thank you most heartily for your kind wishes as expressed. I will endeavor to anticipate on Wednesday next (10th inst.) payments due Nov. 15th & 25th instant. I would like to promise a larger amount, but collections are too slow to depend upon.

With much respect, I am yours very truly,

D. S. EWING.

192 N. Y., *Nov. 11th*, '75.

Mr. D. S. Ewing, Phila., Penn.

DEAR SIR: The note for $10,000 given in Jan. last, in accordance with our agreement dated Oct. 15th, '74, matures Jan. 26–29th, 1876, and we repeat what we have many times said, that the money is very much needed at that time. We reluctantly consent to any extension of any part of it, and can only do so upon the conditions that you furnish us short, bankable, interest-bearing paper, with an acceptable endorser, for such portion as must be extended.

After the maturity of this note, Jan. 26–29th, your purchases under and by virtue of the agreement dated Oct. 15th, '74, will be settled for as follows: All purchases during any month shall be paid for on the first day of the next succeeding month, one-half of the amount in cash and the remaining one-half in a note dated — 1st, payable at bank 6 months after date.

Yours, &c., J. PARMLY, JR., *Treas.*

193 PHILA., *Nov. 17th*, 1875.

Mess. Willcox & Gibbs S. M. Co., New York.

GENTLEMEN: Genuine Willcox & Gibbs needles are offered in various places throughout this city at less than regular prices, much to the injury of my business, &c.

The Domestic Co., only a few doors below me, are selling these needles at seven cents each. As a consequence my customers are becoming dissatisfied, as I live up strictly to prices as established by you. Cannot a stop be put to the importation into this market of genuine parts and needles for the Willcox & Gibbs machines? Please advise.

Yours truly, D. S. EWING.

194 N. Y., 18*th Nov.*, '75.

D. S. Ewing, Esq., Phila.

DEAR SIR: Yours of the 17th inst. received. We know of no way to stop the sale of genuine needles at reduced prices if parties choose to lose money upon them or sell them at less than regular rates. The Domestic Co. get no needles from us, and their sales, if made at the prices quoted, must be, as the grocers sell sugar, to influence trade. We see no way to stop the importation of genuine parts, either, into your market. We sell to no one at the prices we sell you, and cannot understand where they are procured. Any information you can give us which will lead to the detection of the source of supply will be cheerfully acted upon and supplies cut off.

Yours, &c., WILLCOX & GIBBS S. M. CO.,
Per C.

195 PHILA., *Jan. 17th*, 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

MY DEAR SIR: Allow me to congratulate you upon the entire success of your "ticket." Owing to your illness on Saturday (from which I trust you have fully recovered) I was unable to talk over business matters with you, and neglected also to leave with you my check for $418, which I had taken with me to New York. Please find the same herewith enclosed and excuse the oversight.

I have a larger number than usual of small bills to pay this month. My advertising bills rendered last month amount to $1,365.88, and it will prove an accommodation to me if you will be so good as to accept in payment of $1,782 my note at 30 days for the amount, with interest at 7%, $10.40; total, $1,792.40.

The prospects of an increased business this season are quite encouraging, and I shall make diligent effort to secure all that I may.

With much respect, I am yours truly, D. S. EWING.

196 N. Y., *Jan. 18th*, '76.

D. S. Ewing, Phila., Pa.

DEAR SIR: We have your favor of the 17th inst., and in reply say that we do not feel you would have asked us to accept this note unless it was really a necessity on your part, as you know how much we need cash. If we accept we shall make immediate sale of it in your city, so as to avail ourselves of the funds; but before saying whether we can use it or not you will please let us know what is the relation of your special partnership and of your condition at this time.

The Mercantile Agency announces the expiration of your special partnership, in which case, of course, we should want to know something about the settlement to be made of its affairs before entering into new arrangements. We should very much prefer your check for the amount due, as in all probability to make the discount we must stand a greater shave than the 7% interest you have added. We are obliged to you for your congratulations, and very sorry that the writer was so prostrated as not to have been able to receive them in person. Please let us have a memorandum from you of the ex-

penses incurred in procuring proxies and during your stay here auditing the accounts, and much oblige

Yours, &c., J. PARMLY, JR., *Treas.*

197 PHILA., *Jan. 19th*, 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

MY DEAR SIR: Your favor of 18th inst. is at hand and contents duly noted. I shall have no difficulty in arranging to retain in my business the capital of Mr. Wurts—say $20,000—if I may depend upon the continuance of as liberal an arrangement with you as I have hitherto enjoyed. Since the advent of the new machine my affairs have been improving, but I cannot wisely reduce at present the amount of my capital or line of credits, though I hope, without increasing either, to swell the volume of my business.

The total amount of your invoices to me last year was $15,650.16 and the amount of my cash payments to you $15,614.16. I believe that I never have been delinquent in my payments to you or others, and very seldom have I asked for extra accommodations, and I shall seek in all the future to be no less exact and prompt than I have been hitherto.

The notary fees upon proxies obtained amounted to $8.25. Travelling expenses were $6.50 and hotel bill $11.50; total, $26.25. With much respect, I am

Yours truly, D. S. EWING.

198 N. Y., *Jan. 20th*, '76.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: Your favor of 19th inst. received. In view of the contingencies you mention we should not feel warranted in extending any liabilities made under the arrangements pending last year. We therefore return you the note dated Jan. 17th, 30 dd., for $1,792.40, and request that you will remit us check for $1,134, now due, for Dec. 17th & 21st bills, and check for $648 on Jan. 22nd, for bill of Dec. 23rd.

We cannot believe it possible (though your letter gives that impression) that you have made any calculations upon the renewal of the note. We have insisted every time it was mentioned — could not be renewed.

If you have made no provision for it there is scarcely a week left to you in which to do so. Please let us hear from you at once, for your letter excites no little anxiety here. Herewith find credit bill for $26.25, and we send many thanks for the trouble you have taken for us.

Yours truly, J. PARMLY, JR., *Treas.*

199 PHILA, *Jan. 21st*, 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

MY DEAR SIR: I regret that you should have misapprehended at all the purport or spirit of my letter of 19th inst. Since we last talked upon the subject of the line of credit proposed for the year

now entered upon I have been endeavoring to so shape my affairs that I might comply with your wishes, and to some extent I have been successful in my efforts.

I meant to have had a full and clear understanding with you upon the occasion of my last visit to New York, and I now propose to call upon you early next week, if that time will suit your convenience. I feel very certain that you will give me credit for doing all in my power to advance the interests of the company.

Please advise me what day you care to see me and thus oblige

Yours very truly, D. S. EWING.

200 N. Y., 22*nd Jan.*, '76.

Mr. D. S. Ewing, Phila., Pa.

DEAR SIR: Yours of Jan. 21st received; can see you at any time; expect to be here Monday p. m. or Tuesday a. m. surely.

Will only add that our propositions as contained in Nov. 11th letter to you are final, and we shall be satisfied with nothing else. Hence we trust your coming over is not prompted by any new propositions. If we know when you are coming we will tel. you in the event of being called out of town.

Yours truly, J. PARMLY, JR., *Treas.*

201 N. Y., *Feb.* 2*nd*, '76.

D. S. Ewing, Esq., Philadelphia.

DEAR SIR: We are very much surprised that we hear nothing from you from day to day. We are very greatly in need of money, all of which you know from us and from Mr. Southworth. We had depended upon your payments to meet our own, and your delay causes not only great inconvenience, but absolute loss to us.

Send us at once every dollar you can scrape together for your December purchases, and complete the payment thereof at the earliest possible moment. Our necessities are pressing us very sorely, and what is due from you will help us very much. Please do all you possibly can and with utmost speed.

Yours, &c., J. PARMLY, JR., *Treas.*

202 PHILA., *Feb.* 2*nd*, 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

MY DEAR SIR: I hope to adjust matters with you satisfactorily within a few days, but in the meantime, that my business may not suffer, I propose to pay you cash for all the goods I may have occasion to order, unless you prefer that they should be sent in the usual way. I have five canvassers now employed, and the result of their work is much more satisfactory than it was last year.

I am very much encouraged with the present outlook of business, and my expectation is to accomplish more this year than ever before.

Enclosed I hand you an order for the goods which I now require. Please ship them by express and oblige,

Yours very truly, D. S. EWING.

203 PHILA., *Feb'y 9th*, 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

DEAR SIR: I send you by to-day's mail a registered letter containing five notes to my order, duly endorsed, as you desired, the same amounting to $7,924.71. I am anxious to know that they reach you safely, as they are negotiable without additional indorsements.

Enclosed I hand you an order for machines and parts.

The missing belts have been found packed in with the wheels, as advised by Mr. Swart, and I hasten to apologize for the trouble caused you. Please let 24 belts be left out from next shipment.

Yours very truly, D. S. EWING.

204 PHILA., *Feb. 9th*, 1876.

Mr. J. Parmly, Jr., treas. Willcox & Gibbs S. M. Co.

DEAR SIR: Agreeably to understanding had with you on the 4th inst., I hand you herewith five notes to my own order, all dated Jan. 29th, 1876, and covering together $7,924.71.

One note is for $1,566.50, at two months.
One note is for $1,575.86, at three months.
One note is for $1,585.19, at four months.
One note is for $1,593.92, at five months.
One note is for $1,603.24, at six months.

These notes I have indorsed, and have secured upon the two latter ones the indorsement of my father also, as you desired. Be so good, please, as to return to me the note which these have annulled by an early mail, and thus oblige,

Yours very truly, D. S. EWING.

205 PHILA., *Feb. 17th*, 1876.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: Your favor of 16th inst. is at hand and contents noted. It is the most satisfactory letter bearing upon its subject-matter that I have yet received from you.

Had you given me the same assurances some months ago and declined to supply machines and parts, both directly and indirectly, to the dealers and the manufacturers here, I could have retained much of the trade which I have lost, and I feel confident now that I shall have no more trouble in maintaining a satisfactory business with all my legitimate customers.

Very respectfully, D. S. EWING.

206 N. Y., *Feb. 19th*, '76.

D. S. Ewing, Phila., Pa.

DEAR SIR: We shall enter your order for "12 new style shafts," first & second sizes (12 each), but can hardly think it possible you require them so soon. We have not had call for more than six new shafts since we commenced the sale of the "Automatic" machine. It will be some days before we receive these shafts from the factory, and if you desire to reduce your order please let us know.

Your letter of the 17th seems to indicate that we had at some time done otherwise than was for the best interests of this company and for the interests of your trade. We wish it distinctly understood that we repudiate any such charge, if that was the intention of your letter.

Yours, &c., WILLCOX & GIBBS S. M. CO., C.

207 PHILA., *Feb.* 21*st*, 1876.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: Yours of 19th inst. at hand. The shafts which my order calls for are not for the "Automatic" machine, but the same as I have been receiving hitherto as "new style." (They are for the latest pattern of the old-style machines, say, the build of 1874.)

How shall I express my wants hereafter? I shall still require the "O. S." and the "N. S." shafts, needle-bars, &c., for the old pattern machines.

Yours respectfully, D. S. EWING.

Please hurry forward the goods ordered.

208 PHILA., *Feb.* 23*rd*, 1876.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: One of my customers in to-day says that he is offered genuine Willcox & Gibbs needles at $38 per M, and that he can obtain all the genuine parts he wants at lower prices than 40% discount from list.

I often have calls from other places outside my district for W. & G. parts, &c., but have been in the habit of referring such to the houses having control, &c. Am I to understand that hereafter I need not do so, but may compete with you and your various branches, agencies, &c., whenever I have an opportunity? Is it not better to respect each other's interests?

Resp'f'y, D. S. EWING.

209 N. Y., *Feb.* 24*th*, '76.

D. S. Ewing, Phila., Pa.

DEAR SIR: Yours of 23rd received. The headquarters or no branch of this concern is offering needles or parts in your field for less than full retail rates. If you stirred up your trade with one-half the persistency you "drive" this groundless charge at us we might expect out of your field a tenfold increase of business.

You are not at liberty to sell any goods at a discount outside of your own field. We have repeatedly written you that when you have faults to find with us to come down to facts and give us names. These you never give us. Now, on the contrary, we will give you the name of Smith & Ensign, who are purchasers here, for the Grangers; and, having failed to buy machines of us at a discount, went to your city and supplied themselves with goods at a big discount, which were sold into this State to our damage. They did

not buy of you direct, but stated to us positively that indirectly you sold them, and that you knew where they were to go, for the goods were marked in your store and shipped direct. Within the past year they have three or four times been able to make these purchases.

Did you at any time refer P. T. Hoeflisch, of Richmond, to
210 this office, or did you, as he states, sell him goods at a very large rate of discount within the last six months or a year? Here are two names we have given you, and could give you more if the occasion required it, but we have only to add your house is of "glass," and until your own skirts are free cast no more innuendoes at us. In all our dealings we observe the strictest honor, and take no chances upon being found "out." Cite any instance to us of a breach by us of our contract and we will give you the discount you are entitled to; to the same extent we will hold you responsible to the letter hereafter.

Yours, &c., WILLCOX & GIBBS S. M. CO.,
C.

211 PHILA., *Feb. 25th*, 1876.

Mess. Wilcox & Gibbs S. M. Co.

GENTLEMEN: Your favor of 24th inst. is at hand. You have evidently mistaken entirely the object of my letter of 23rd inst. It was not intended to "raise a breeze," nor to cast "stones" or "innuendoes," but simply to call your attention, in a proper manner, to such irregularities of competition, outside of your office, as is working great harm to myself and all legitimate dealers in the "W. & G." Instead of manifesting annoyance, I should suppose that you would be only too glad to correct the evils alluded to. Not to be too captious over the spirit of your letter to me, I will proceed to answer it in a straightforward manner, thanking you for the opportunity to set myself right.

None of the "Grangers" have ever been able to purchase from me at a discount, either directly or indirectly, any W. & G. machines or parts, but I have always, when occasion offered, refused to supply them, and have protested against their publishing the "Willcox & Gibbs" in their catalogues. I never before heard of "Smith & Ensign," and never have shipped machines into New York State, nor have I marked any for that destination or known of any being sent, and referring back three years, I am positive that no Willcox & Gibbs machine has gone out of my territory, except at retail
212 price. Mr. P. T. Hoeflich is a South St., Philadelphia, dealer, but has never bought at any price any sewing-machines from me, and only a few parts, at regular rates. I regret that you failed to mention the names of other parties referred to, as I would be glad to refer to their possible acc'ts upon my books, and so relate the facts to you. You are at liberty now or at any time to thoroughly investigate every case you have any doubts about. I have been, and am, exceedingly careful not to trespass or overstep the rules you have established. Perhaps I have been too particular—for your good and mine. At all events, I have been utterly unable to

do business with quite a number of my old customers, because, and only because, they can buy more cheaply elsewhere.

New machines are brought into Phila. by O. F. Davis & A. T. Stoops and sold at less than I am allowed to do. Mess. Thomas Dolan & Co. and Charles Spencer, large manufacturers, acknowledge that they are receiving more than 25% discount upon genuine goods. Glazier & Bro. get 30% off upon hooks, otherwise they use bogus goods. The same is true of Jesson & Hanifen. Jno. G. Powell has shown me bills from John Thornton & Co., of New York, so low that I would lose money to duplicate. The Domestic S. M. Co., at 1111 Chestnut St., sell genuine W. & G. needles at 6 cents each. Mr. O. F. Davis, having procured tools & machinery from Brown & Sharpe, are buying up old W. & G. machines, remodeling them with some genuine, but more bogus, parts,
213 numbering them above 200,000, and selling them at very low prices, thus injuring my trade. If he could not obtain hooks at favorable prices, elsewhere than of me, I could soon bring him to terms or break up his nefarious business. I have given you these facts in no spirit of "fault-finding," but because it is a serious matter to you and to me. The whole trouble can be corrected, and ought to be.

Very respectfully, D. S. EWING.

214 PHILA., *Feb. 26th*, 1876.

Mess. Willcox & Gibbs S. M. Co.

GENTLEMEN: I wrote to you yesterday that, referring back three years, I could find no evidence of having shipped any machines at all into New York State. I quite overlooked, however, one sent in 1874 to O. M. Chamberlain & Co., but this should have been returned to me with a "plaiting attachment" added. Hearing nothing from Mr. Chamberlain, I advised you of the facts and requested that, if possible, you would secure the return of the machine to me.

I felt no hesitation in asking this favor at that time, as I had frequently performed similar offices for you, as your representatives at New York city, Chicago, St. Louis, Cincinnati, Baltimore (Price & Co.), and Albany will acknowledge. Nevertheless, you took no notice of my request at the time, but several weeks later advised me that Chamberlain & Co. had been "sold out." Of course, the machine was sacrificed. Mrs. Bowen, No. 241 So. 18th St., Phila., sent to New York and obtained a "New Automatic" sewing-machine "at a discount," so she says. My territory is now so circumscribed and my expenses so heavy that I feel as though I ought to have no competition, especially as I am guaranteed immunity from it. I trust that you are getting "tenfold results" from that portion of this State over which I no longer hold you in restraint.

Respectfully, D. S. EWING.

215 PHILA., *Feb. 28th*, 1876.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: Please ship to me by Penna. R. R., on Wednesday,

March 1st proximo, say 60 No. 5 "Automatic" sewing-machines at $70 each. Let the machines and tables come together, and the cabinet-work from Mr. Grove's, and oblige,

Yours very truly, D. S. EWING.

216 N. Y., *Sept.* 11*th*, 1876.

D. S. Ewing, Esq., Phila., Pa.

DEAR SIR: Indirectly we hear that Stoops is selling bogus needles in your city at $35 a thousand. Can you put up a job on him and see whether it is so or not?

Sorry to see purchases fall of so again in August. Hope cooler weather and returning people will bring you much better trade this fall. Let us have balance on the note due 4th as soon as you can, as we need the money.

Yours, &c., J. PARMLY, JR., *Treas.*

217 PHILA., *Sept.* 12*th*, 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co., New York.

DEAR SIR: Your favor of 11th inst. is at hand. I will endeavor to ascertain the facts regarding the sale of bogus needles here. Business has been exceedingly quiet ever since the opening of the "Centennial," but I hope for better things soon. Can you not use my note at three months, endorsed and with interest added, say for $1,500, and thus enable me to pay the balance due, including note due on 4th proximo? I would be glad to make some purchases this month, but hesitate, as I do not wish to increase the amount of my account, and next month, as you know, I have quite a heavy note maturing, which I must not disregard.

With much respect, I am yours truly,

D. S. EWING.

218 N. Y., *Sept.* 12*th*, '76.

D. S. Ewing, Phila., Pa.

DEAR SIR: Much obliged to you for reference to the Bellefont case.

In reply to your application for a three months' extension we do not see how it will be possible for us to go without the money so long, nor would we wish to use your note as suggested. When we made the last extension we cautioned you against relying on us to help on the October note, and we hope you will be able to meet it, as also to pay the balance on the September no. without much delay.

We wish your collections might be better, and that you could do more trade. We do not feel that you are doing your share of the business.

Yours, &c., J. PARMLY, JR., *Treas.*

219 PHILA., *Sept. 14th*, '76.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

DEAR SIR: Your favor dated Sept. 12th inst. is at hand. You do not, I am sure, hold me in any measure responsible for the lightness of my summer trade. Since the opening of the exposition here all business has been at a standstill—worse a great deal with most of my neighbors than with myself. My purchases have been somewhat smaller than would have been the case if I had not been ambitious to reduce each month my account with you.

I would be glad now, with the opening of the fall season, to engage a larger number of canvassers, and so compass the city and scatter as widely as possible the "New Automatic" among our well-to-do classes; but it is no part of my plan or disposition to increase at all my line of credit. I simply would put off temporarily the further reduction of my account and in such a manner as would prove the least embarrassing to you. You will recollect that the amount of accommodation I needed last July was from three to four thousand dollars. You very kindly accepted my note for $1,565.38 in lieu of cash, and I was very thankful for the courtesy, but it did not afford me full relief, and I have been short of funds ever since, though I am now gaining slowly and will soon be all right again.

Yours very truly, D. S. EWING.

220 PHILA., *Sept. 27th*, 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co., New York.

DEAR SIR: I expect to see you at New York early next week, and hope to satisfy you with regard to my account. Will you do me the favor to hold over my note due on the 4th proximo until I see you? Business prospects are improving somewhat with me, and I am in need of a lot of machines now, as my canvassers are hard at work and quite successful in placing machines upon approval.

If you will book my order for, say, 48 No. 5 machines and ship on Monday next (Oct. 2nd) they can be used to good advantage, and I will esteem it a favor.

Yours very truly, D. S. EWING.

221 N. Y., *Sept. 28th*, '76.

D. S. Ewing, Esq., Phila., Pa.

DEAR SIR: We have your favor of 27th inst. We shall be glad to see you at any time, but we cannot afford to go without our money the 4th of October. We are yet with only one-third the amount paid upon your Sept. 4th note, and we are compelled to decline the extension of your Oct. 4th note. We shall therefore let the note go forward and rely upon your making such arrangements as will enable you to meet it.

We shall be hard pressed for money in the early part of October, and want every cent it is possible to raise. You will therefore see the importance of meeting this note without fail. Considering the present aspect of your account, we do not think you can expect us to

enter your order, though we should like very much indeed to furnish you the goods you call for.

Yours, very truly, J. PARMLY, JR., *Treas.*

222 N. Y., *Oct. 2nd,* '76.

D. S. Ewing, Esq., Phila., Pa.

DEAR SIR: In reply to yours of 30th ult., say we have no objection to your having sold Morrow a hook. Hope you got your money. He sent us money for the hook and we returned it to him with word that we "would sell him nothing more until he paid us what he owed us." This is probably what drove him to you. Notwithstanding the reported conversation you had with him, he repeats again, in a letter received this morning, that he called at your office and your assistant told him that he had sent a machine for $45 (old-style machine) to Trenton. Very little reliance can be placed upon Morrow or his statements.

Yours, &c., J. PARMLY, JR., *Treas.*

223 PHILA., *Oct. 3rd,* 1876.

Willcox & Gibbs S. M. Co., 658 Broadway.

Letter received. Ship to-day goods ordered.

D. S. EWING.

224 PHILA., *Oct. 3rd,* 1876.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

DEAR SIR: Your favor of yesterday's date is at hand. I must confess to being so much surprised at your communication of 28th ult. as to be unable to offer any suitable reply. I felt, moreover, that no answer was necessary, since your language seemed final and could not be misunderstood. In view of the fact that I have seldom asked for favors and have met promptly all my engagements, reducing my account with you each month during all this year, aggregating nearly 50% of my indebtedness, I felt that my request was not an unreasonable one; but your unwillingness to grant the indulgence asked caused me less surprise than did your refusal to supply me with the moderate number of machines ordered.

If I am not entitled to generous treatment I certainly have not forfeited your confidence or the ordinary courtesies of trade. I really felt that I had and still feel that I ought to have greater claims upon you for such accommodations as I may occasionally require than I have elsewhere. Nevertheless, my resources are not circumscribed within such narrow bounds as you seem to have supposed.

Respectfully, D. S. EWING.

225 PHILA., *Oct. 27th,* 1876.

Mess. Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: The "Centennial" seems to be absorbing the attention of all our people, and will doubtless continue so to do unto the end. All business is therefore much depressed and collections very

poor, indeed. As I am now not at all behind in my payments to you and have honored claims amounting to more than three thousand dollars in your favor this month, I trust that you will grant me cheerfully a little indulgence next week, as I am apprehensive of being short of funds at that time.

To cover my note due on Nov. 4th proximo—am't, $1,229.23—will you not please accept two checks—one for $629.23, to be used at once; the other one for $600.00, to be used within ten days. The amount due on account I will endeavor to settle within a few days thereafter.

By favoring me as above you will very much oblige,

Yours very truly, D. S. EWING.

226 N. Y., *Oct. 28th*, '76.

D. S. Ewing, Esq., Phila., Pa.

DEAR SIR: We have yours of 27th inst., and will favor you as requested. Do not make the second check for $600 to run longer than the ten days suggested, and we trust you will not keep us long waiting for the cash due upon the account after 1st prox.

We shall need large amounts during the month of November and rely upon you to help us out to the extent of whatever amount is coming from you.

Yours, &c., J. PARMLY, JR., *Treas.*

227 PHILADELPHIA, *Nov.* 10, 1876.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: I note your "corrected bill" and am much gratified with the reduction in price of needles.

Yours very truly, D. S. EWING.

228 PHILA., *Nov. 24th*, '76.

Mess. Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: In reply to your favor of yesterday's date I would say that it has been my purpose to send you check at the earliest practicable moment. Owing, perhaps, to the election muss the "revival of trade" anticipated upon the closing of the Centennial has not been realized, and I have met with many disappointments in the way of collections. Nevertheless, you may depend upon the prompt payment of my note @ $997.05, which matures now in a few days (on 4th prox.). After that note shall have been paid you will hold but a small amount of my paper, and it would be a great convenience to me if you would accept as payment on account my note, say, at three months for $1,500, with interest added. I am advertising now quite freely and have five canvassers at work and hope for good results before Christmas.

With much respect, I am yours very truly,

D. S. EWING.

229 N Y., *Nov. 27th*, '76.

D. S. Ewing, Esq., Phila., Pa.

DEAR SIR: Replying to yours of 24th inst., say there is only one way in which we can take your note, and that is to have you draw it to your father's order and have it endorsed by him. Make it for $1,500, dated Nov. 20th, at 3 months. We could use this, but could not take your note and use it without endorsement.

If this meets the case send note with as little delay as possible, as we are urgently in need of funds. Very sorry you disappointed us; thought surely you would send us some money in reply to ours of 23rd inst. Let us know by return mail what we can count upon, and when.

Yours, &c., J. PARMLY, JR., *Treas.*

230 PHILA., *Feb. 10th*, 1877.

Willcox & Gibbs S. M. Co., 658 Broadway, N. Y. city:

Express to-day twelve machines and freight thirty-six, with tables.

D. S. EWING.

NEW YORK, *Feb. 10th*, 1877.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: Telegram rec'd, and we will to-day express the 12 heads; but will you be good enough to explain more fully by letter the latter part of the order?

Yours, &c., J. PARMLY, JR., *Treas.*

231 PHILA, *June 29th*, 1877.

Willcox & Gibbs S. M. Co.:

Will Mr. Parmley be at office on Saturday or Monday?

D. S. EWING.

232 PHILA., *June 29th*, 1877.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co., New York.

DEAR SIR: I have been expecting all this month to receive from you a letter advising to this effect, viz., that in view of the late reduction of prices by the other sewing-machine companies (in consequence of which it is strongly recommended that favorable concessions be made to cash customers), and because you are required no longer to pay tribute to the "Combination Co.," that a more favorable line of discount will be accorded to me upon all purchases of machines and parts.

You are so thoroughly familiar with all the conditions of general trade and of the "ins and outs" of the sewing-machine business in particular that it is quite unnecessary for me to call your attention to "the situation" from my stand-point. I may say, however, that I must very soon determine whether or not to renew my lease, and I would like to be encouraged to do so. I thought to go over to see you within a day or two, but may conclude otherwise, as I have occasion to go south again to see my family by the earliest train I can take.

Yours very truly, D. S. EWING.

233 NEW YORK, *June 30th*, 1877.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: We are duly in receipt of your favor of the 29th inst., and note suggestions therein.

We have not considered at all the making of any such proposition to you as you seem to have been expecting. We sent you a copy of our first circular to managers and agents, and our second letter, issued only to managers, was shown to you by Mr. Hand, who had a copy. We did not issue these generally, but were glad to have you receive any possible benefits from it, and therefore wrote Mr. Hand that you might see it.

We have made no change in our rates of discount to agents, nor do we intend to so long as the retail prices are maintained at present point. We recommend a trifle more elasticity in the matter of discount for cash on retail sales, adopting a sliding scale, from 10 to 20%, as may seem most expedient in each individual case.

We have found great benefit to accrue by using our old-style machine as an entering wedge, or as a kind of "bluff game," and when we found a party insisting upon having something really cheap we offered him the old style of machine, just as we sold it 15 years ago, with old style of castings, at $30 reduction from the "Automatic" list price. The effect is produced at once, and we find in almost
every case that it is not cheap things people want, but that
234 they want to buy the best for the least money. Having the
old-style machine, on old-style castings, stand alongside the new machine complete enables us to draw a very great contrast, very quickly understood by purchasers. We think, if you have not already adopted this plan, that you will find much profit and satisfaction in doing so. In case you find sale for more of these old-style machines than you have already taken in, in exchange, we will sell you such others as you may require at a discount, for the present, say, of 30% from the reduced retail prices. For instance, our No. 2 "Automatic" is $60; the No. 2 "common" thing (O. S. machine and O. S. cast.) would be $30, from which price we will discount to you 30%, strictly for all cash.

Respecting any new lease for your store, say, you must be the best judge of that. If renewed we certainly would not advise any long lease, and it is very questionable with us whether you will be warranted in renewing your lease at all or not. Whatever profits can be made in the sewing-machine trade for a year or so to come, seems to us, must be made out of reduced expenses and the practice of the strictest economy in every department. A smaller store and one not quite so prominently located—to be had, we think, at a reduced rental—would serve you nearly if not quite as well, so far as the conduct of the sewing-machine business is concerned; but what effect the giving up of your fine store and your prominent position would have upon your pattern business, &c., you are much better able to judge than we. We are satisfied the worst condition of the sewing-machine trade is over, and from this time any change must be for the better. We shall be pleased to see you, if you come over, or to hear from you at any time.

Regret very much to learn that you have bad news again from the South.

Yours, &c., J. PARMLY, JR., *Treas.*

235 NEW YORK, *July 30th*, 1877.

Mr. D. S. Ewing, Phila., Penn.

DEAR SIR: Where do you buy sewing-machines now? We get no more orders from you. Since May 4th have sent you no machines and sold you very little of anything. At no other point have things "shut down" so completely. Are you making any effort?

Yours, &c., J. PARMLY, JR., *Treas.*

PHILADELPHIA, *July 31st*, 1877.

Mr. J. Parmly, Jr., tr's., New York.

D'R SIR: Your favor of yesterday is at hand. Mr. Ewing is at present out of the city, and his attention will be called to it on his return.

Yours, &c., F. A. STURGIS,
For D. S. EWING.

236 NEW YORK, *Oct. 8th*, 1877.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: The volume of business you are now doing for this Co. in the great city of Philadelphia, with its suburbs, is wholly inadequate and out of all reasonable proportions to your population if any vigor or "push" was applied to the sale of machines. When you visited here last week we so stated to you, and you met us with the old assertion that you had no chance—no margin to "push" on—and that the additional 5% on your purchases was just what was wanted to enable you to largely increase trade. We must do more trade in your field at once, or there is no use in your trying to keep alive an agency unprofitable to you, discouraging to us, and dying a slow death. Under certain conditions we will for a time advance your discount this much-coveted 5% to see if the material increase follows that we have been told would result:

1st. 60% discount will be made you, provided you pay your bills all in cash upon receipt of the goods; or—

2nd. 60% discount will be allowed, settlement same as at present—half cash and half note at 6 months—provided all contracts or agreements between us be cancelled and you simply bind yourself to sell no goods at a discount to go out of your own city or immediate vicinity, and agree to take 40 machines a month
237 for the ensuing 12 months and 60 machines a month for the next consecutive 12 months thereafter. Goods will be billed at the new discount as soon as you notify us that you accept either proposition.

Yours, &c., J. PARMLY, JR., *Treas.*

238 PHILADELPHIA, *Oct. 9th*, 1877.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co.

DEAR SIR: Your treatment of me reminds me very forcibly of Pharaoh's dealings with the children of Israel, with this important exception, to be sure, the latter were slaves, but they did not succeed very well in making brick without straw. For many years I have done business to the mutual advantage and satisfaction of the W. & G. S. M. Co. and myself, my sales averaging about 1,000 machines per year, one-half of which were at wholesale.

You, depriving me of all country territory and confining me strictly to the limits of this city, said, "We want you to keep up your sales." Reducing my line of credit to a mere pittance, you reiterated, "Keep up your sales." Cutting down my commission to the cost price of selling machines, you said again, with severe emphasis, "You must keep up your sales." And now you say, "Cancel all agreements (which would give you the right to step in at any time and possess that for which I have expended time and money) and increase your sales and you shall have the extra five per cent. which you claim under the contract."

When I was in New York a few days ago you asked me this "conundrum," "How is it that the American S. M. Co.'s sales are
239 increasing while ours are continually diminishing?" Allow me to answer first in the negative: It is not because the "American" is even the best machine of its class, and you and I are of one opinion as to the superiority beyond comparison of the "Willcox & Gibbs New Automatic." May it not be that the American Co. secure and retain the very best services of their agents by a fairly liberal policy?

Without multiplying words, let me suggest the following change in your proposition of 8th inst.: Suppose you say to me, "Continue along under existing arrangements, set canvassers to work, advertise the machines, and otherwise push your business vigorously and you shall have at the close of the year a rebate amounting to five per cent. upon your gross purchases, provided that they do not fall below an average of forty machines per month."

With some such positive encouragement I would endeavor to realize your wishes and expectations.

Yours very truly, D. S. EWING.

240 PHILADELPHIA, *Oct. 24th*, 1877.

Messrs. Willcox & Gibbs S. M. Co.

GENTLEMEN: Your favor of 22nd instant is at hand and contents noted.

Your proposition to supply me with the best quality Goodrich tuckers at 40c. each is very satisfactory, and you may depend in future upon my orders and all the influence I can bring to bear upon my agents. Can you not offer Johnston gatherers at similar rates? Not to invalidate in any way the existing contract, I am prepared to make you the following proposition, viz: I propose to push very vigorously, by advertising, canvassing, and otherwise, the "New Au-

tomatic" machines, and to pay you cash at the close of each month for all my purchases, provided you will allow me the extra 5% hereafter and upon all I have bought since August, 1875. I scarcely need to remind you that this 5% has been and must continue, for the present at least, to be the profit of the canvassing work, and paying you cash you will take no risk in all my business, the volume of which will swell in proportion to the encouragement.

Yours very truly, D. S. EWING.

241 NEW YORK, *Oct. 25th*, 1877.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: Yours of 24th inst. rec'd.

We say positively we will not accept your proposition making any discount retroactive on any part of past business.

Johnston rufflers we cannot sell you at any less price than heretofore.

Will ship the No. 2 tops, as directed in yours of 24th inst.

Yours, &c., WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

242 PHILADELPHIA, *Nov.* 1, 1877.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: Be so good, please, as to send to me by mail a statement of October account and I will send you remittances to cover. My note in your favor, $1,103.49, due on the 3d inst., is already provided for. I am making another effort to increase my business by canvassing, and I shall hope for favorable results in the matter of sales if not in profits.

Please fill my order enclosed without delay, and oblige

Yours truly, D. S. EWING.

243 NEW YORK, *Nov. 3rd*, 1877.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: We enclose you herewith the new price-list of parts for our old style of machine. You will notice the prices are very much reduced on the principal parts. From this reduced list we shall hereafter discount to you 30 %.

In the hope of getting a much larger part trade than we have ever had, and of getting back the manufacturers' trade (which has left us for bogus parts), we are making a strong effort in the form of a circular to the manufacturers. If you wish it we will send you a copy of this circular.

The margin on parts for O. S. machines is going to be very small hereafter, as we shall give to the manufacturers a discount from this list of 10 to 15 %; where very large numbers of machines are used may do a little better. It will probably be to your interest to follow our practice in this respect.

Yours, &c., WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

244 PHILADELPHIA, *Nov. 3d*, 1877.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: I hand you herewith, in answer to your statement just received, my check for $609 06
Also my note at 6 months for 614 06

Covering in full the amount, say $1,223 12

I note a manifest error in your invoice of to-day, and respectfully ask you to correct the same. It would appear by the invoice in question that you have reduced the retail price of parts and increased the wholesale price to me.

Yours truly, D. S. EWING.

245 NEW YORK, *Nov. 5th*, 1877.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: We revised the price-list of old-style parts with the view to having such parts net, at 30% discount, a trifle lower rate than the old rate with discounts off. You will find, taking the whole list together, that as a whole the parts would cost you a little less than under the old plan. Indeed, it is a fact that the bill in question nets you less as charged to you than if we had billed under old rates. However, it is not necessary for us to discuss in detail each single part, comparing net rates under old discounts and new discounts, but say we will make your rate on the new list one-third off, and leave it to you to figure whether you prefer to have goods billed to you at old list rates, less 55% discount, or new list, less one-third off. One or other list we must abide by, and whichever is most advantageous to you we leave you free to adopt.

Yours, &c., WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

246 NEW YORK, *Nov. 13th*, 1877.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: We have your order of 12th inst., which we will get ready for you as soon as possible. Meantime, please answer our letter of 5th inst., that we may know your preference about rates for these parts.

Yours, &c., WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

247 PHILADELPHIA, *Nov. 14th*, 1877.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: Yours of 13th inst. at hand. Bill goods at contract prices and I shall be satisfied.

Yours very truly, D. S. EWING.

248 PHILADELPHIA, *Feb'y 1st*, 1878.

Mr. J. Parmly, Jr., tr. W. & G. S. M. Co.

MY DEAR SIR: Your statement in open meeting yesterday, that I had obtained the "inside track" in my arrangement with the W. & G. S. M. Co., and that in consequence you had declined to favor me in your recent change of prices to purchasing agents, led Mr. Carleton to inquire somewhat into the matter of our business relations. I could readily account for the former discrimination but not for the latter, and I now respectfully appeal to you for a solution of the matter. I have faithfully observed every condition of the contract on my part and I cannot understand why you choose not to allow me all the benefits conferred upon me by its provisions. As I intimated in my expressions yesterday, I feel sanguine that a very considerable number of the "New Automatic" machines may be sold throughout the country, and, as you are doing very little or nothing at all in Eastern Penna., Southern New Jersey, and Delaware, why not make it to my advantage to undertake again the establishment of agencies? In former years I sold several hundred machines per annum in this district. Upon as favorable conditions I believe that I might do quite as large a business as ever, and I feel disposed to do the most that is possible. At what price will you supply me with machines and parts from Jan'y 1st, '78, for net cash at 30 days?

Resp'ly, D. S. EWING.

249 NEW YORK, *Feb. 2nd*, 1878.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: Yours of 1st inst. is rec'd and shall have consideration. Meantime, cannot you tell us, as we requested of you some time since, what would be an inducement to you in the way of discount that you would be ready to pay cash for all bills and what number of machines you could engage to take during 1878 and during 1879, so as to give us something to rely upon?

Yours, &c., WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

250 PHILADELPHIA, *Feb'y 4th*, 1878.

Mr. J. Parmly, Jr., treas. Willcox & Gibbs S. M. Co., New York.

DEAR SIR: Your favor of 2nd inst., asking me to make you a definite proposition looking to the payment of cash for all goods purchased, is at hand. You will recollect that I endeavored some time since to meet you upon this ground, and offered to cash all bills and notes outstanding upon the simple condition that all bills since Sept. 1st, 1875, should be rendered to me at contract prices. I now propose, as an equivalent for this back commission, say, 5% extra upon all purchases for the ensuing two years, commencing with January 1st, 1878, ultimo. If you will discount to me from present retail prices of machines and parts—say, 65%—I will pay cash at thirty days for all goods purchased, and will seek to increase my

business very largely by advertising, canvassing, and the establishment of sub-agencies throughout such country territory as you may grant to me. I really believe, Mr. Parmly, that with the encouragement named I can do at least double the amount of business that it is profitable for me to do upon present margins. It certainly cannot be to your disadvantage to give me this opportunity to
251 prove what I can do in the direction indicated, since all this territory outside of my city limits now lies idle and valueless to us both.

With much respect I am,
Yours truly, D. S. EWING.

252 PHILADELPHIA, *Feb'y* 7, 1878.

Mr. J. Parmly, Jr., tr. W. & G. S. M. Co., New York.

D'R SIR: In responsé to your telegram of to-day I hand you herewith my note, dated Feb'y 1st, 1878, at 6 mos., for $525.63; also my check for an equal amount—say, $525.63—the same to cover in full your statement as rendered. I wish to call your attention to the fact, however, that the figures represent more than your just claim, and I shall expect a proper allowance to be made when a final adjustment is effected. I regret that we cannot come to an immediate settlement of the matter which has disturbed our relations for so long a time. I do not care to refer to old matters at all, and have entertained the hope—especially since you desired that I should make you a proposition looking to such a result—that a new deal, satisfactory to both of us, might be effected this season. Within a year past you have virtually reduced the retail price of machines 20%, and of parts 33⅓%, and you have, as you stated, made better terms than hitherto to other purchasing agents; and, notwithstanding the fact that I am entitled, by virtue of the contract and by your written and oral promises to me, to a favorable consideration whenever any concessions in prices occurred, you have continued to render all bills to me at old prices and subject to a discount —
253 five per cent. below what is stipulated in the contract. I have every right to expect your "favorable consideration" now. Please let me hear from you, and oblige

Yours respectfully, D. S. EWING.

254 NEW YORK, *Feb. 7th*, 1878.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: We duly rec'd yours of 1st, 4th, and 6th inst., and in answer to latter telegraphed to-day requesting you "to settle the account as usual." Just now our time is so fully occupied with the necessary details following the action at the stockholders' meeting that there is little time to give due consideration to your proposition. It was for this reason that we asked you to say what rate of discount would satisfy you, not expecting, however, that you would name so large a rate as you did in yours of 4th inst.

We must ask that you will not give the matter of any retroactive discount further thought, as it will not be possible for us to

grant such a request: nor can we afford to give you anything like the rate of discount (even for cash) you propose in the Feb. 4th letter; we cannot consider it at all. We would, however, favorably consider a proposition from you to settle your bills in cash on 30 days' time, giving you an additional 10% on net amount of bills, to apply periodically once or twice a year, provided a certain number of machines was fixed upon to be taken each month for some
235 length of time ahead, failure to take such fixed number in any month to work a discontinuance of the arrangement and forfeiture of the additional discount for the current term. If quantity could be mutually agreed upon we think other details could be arranged.

We cannot consider favorably, nor are we prepared to recommend you to try, the re-establishing of agencies as it was formerly done. We are satisfied the effort would entail a loss upon you. You are, however, at liberty—as you always have been—to sell in territory formerly occupied by you, where we have no representatives now, and from which we shall not hereafter notify you to withhold sales when we do form connections.

Yours, &c., WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

236 PHILADELPHIA, *Feb'y* 8, 1878.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co., New York.

DEAR SIR. Yours of 7th inst. is at hand. I felt that you were sincere in asking me to make you a proposition looking to a satisfactory adjustment of all differences and to the establishment of a large and more prosperous business, and so I looked confidently for a more favorable response than the renewal on your part of old suggestions.

It is a matter of regret to me also that you are unwilling to afford me any support in the re-establishment of an agency business through this section of country, where you are not at present in any way represented. You warn me not to undertake so profitless a venture; nevertheless I am willing to take all the risks and abide the results, provided only that I may have supplies of machines and parts at fair prices. My proposition of 4th inst. did not contemplate retroaction but simply low prices for the years 1878 and 1879, and not excessively low prices either. The net profit which I propose to pay you on each machine is full 100 % more than the American Co. receive from general agents. I shall be satisfied to assume all the risks and bear all the expenses upon a margin (after deducting agent's discounts) of one-half the amount of profit which
237 accrues to you from your sales to me; or I am willing to do business, wholly without credit from you, upon the basis of a commission equal to the average cost of selling machines by the employment of your own capital. I put the matter in this light because you say that you "cannot afford" to supply me with goods at contract prices. It is useless and absurd to grant me the privilege of selling machines throughout the territory, which I held under my

original contract, while you refuse to allow me the commission to which I am entitled under the new contract.

This seems to me a very plain matter. I am willing to do an increased amount of business wholly at my risk and divide profits.

Respectfully, D. S. EWING.

258 NEW YORK, *Feb. 14th*, 1878.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: We are unable to express how thoroughly sick and tired we are with your perpetual grumbling and wrangling about discounts. You always have been and are at present favored greatly beyond any other agent we have. We could call "quits" now and end all agreements between us. Instead, however, of doing this we will try for a time, if peace is to be had by yielding to your clamorous importunities. From date hereof bills will be rendered at 60% discount from regular "Automatic" list, to be settled in cash 30 days from date of bills, according to original terms of settlement, to which we recur.

We give notice now that we are dissatisfied with your sale of the "Home" machine. We ought to have and want your whole time and energies devoted to the sale of our machine while the present connection lasts.

Yours, &c., WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

259 FEB'Y 15, 1878.

J. Parmly, Jr., c. o. W. & G. S. M. Co.

DEAR SIR: Yours of the 14th inst. is at hand. I do not know that you study hard to be exasperating, but you certainly do not seek that sort of peace which is most desirable. If you are "sick and tired" of our controversy I am heartily glad of it. You commenced it and you alone have been responsible for its continuance, and I can assure you it has been so thoroughly distasteful to me that I would have called "quits" long ago but for the interests of other parties involved with my own. I feel bound to protect my clients regardless of personal sacrifices, and for this reason have submitted (not always without protest, however) to your frequent encroachments upon my rights. Since you are disposed now to live up to the terms of the contract, I perhaps should not scrutinize too closely the temper of your letters communicating the facts.

Yours very truly, D. S. EWING.

260 NEW YORK, *29th October*, 1878.

D. S. Ewing, Esq., Philadelphia, Penn.

DEAR SIR: Will you please let us know of the machines shipped to you since January 1st, 1877, how many have been sold to—

Strictly retail trade in Phila. and 10 miles around City Hall,

Strictly retail trade elsewhere.

Manufacturing trade in limits stated,

Manufacturing trade elsewhere,
Dealers or wholesale trade in limits stated,
Dealers or wholesale trade elsewhere,
Foreign trade, if any?

Yours truly,

WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

261

PHILADELPHIA, *Oct. 30th*, 1878.

The W. & G. S. M. Co., 658 Broadway, New York.

GENTLEMEN: Yours of 29th inst. is at hand. Will you be so good, please, as to advise me with what object in view you deem it proper to inquire into the particulars of my business?

I have already informed you that I have no foreign trade, and I am not aware that I have come into competition with you anywhere.

Yours very truly,

D. S. EWING.

262

NEW YORK, 31*st October*, 1878.

D. S. Ewing, Esq., Philadelphia, Penn.

DEAR SIR: The information was asked with reference to knowing how best to further the interests of the company, not supposing there could possibly be any objection on your part to our knowing how or where trade is done.

We presumed you would cheerfully furnish all the details necessary for our clear understanding. We wish you would kindly furnish the information, carefully and accurately filled up.

Yours truly,

WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

263

PHILADELPHIA, *Nov. 1st*, 1878.

Mr. J. Parmly, Jr., treas. W. & G. S. M. Co., New York.

DEAR SIR: To answer your questions accurately and in detail will involve, as you must know, a great deal of work, but as I have never declined to serve the company, whenever opportunity has offered, I shall take pleasure in doing so upon this occasion, if only I may be assured that good to the company and no harm to myself is intended. You cannot fail to see the propriety, Mr. Parmly, in view of recent events, of my asking from you full protection in the use that shall be made of such information as you seek from me. I am quite willing and more than willing to aid the company in any way that shall not react to my disadvantage.

Yours very truly,

D. S EWING.

264

NEW YORK, 2*d November*, 1878.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: All we ask of you is a simple statement of the disposition made made of machines sold you since January 1st, 1877.

It is not a labor of very great proportions, and you can readily enough furnish it if you will.

Yours truly,

WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

265

NEW YORK, *8th November*, 1878.

D. S. Ewing, Esq., Philadelphia, Pa.

DEAR SIR: May we ask that you will hurry forward the particulars respecting your sales, which we have asked you for.

Yours truly,

WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

266

NEW YORK, *18th November*, 1878.

D. S. Ewing, Esq., Philadelphia, Penna.

DEAR SIR: We have been from day to day looking for the letter from you, as promised, embodying the views as talked over on November 12th.

Yours truly,

WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

267

PHILADELPHIA, *Nov. 19th*, 1878.

The Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: As it has not been my custom, so it shall not be my purpose, to come into any sort of competition with you in territory outside of my jurisdiction. I shall continue, as hitherto, to be very careful in the selection and appointment of agencies, so that you may have no just cause for complaint, and to the end that the best interests of business may be subserved.

Yours very truly,

D. S. EWING.

268

PHILADELPHIA, *May 3rd*, 1879.

Messrs. Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: In response to your "statement" of April account, just received, I hand you herewith my check for $144.27, which is in full for all demands to date.

I regret exceedingly that my business with you has been narrowed down, by reason of your interdictions, &c., to such small limits and figures, and it must be evident to you by this time that a better understanding between us would have resulted more to our mutual advantage. You may draw your own conclusions from the following facts: In former years I sold each season from four to six hundred Willcox & Gibbs machines throughout the country territory then under my control, and during the past year I have sold even a greater number of the "New Home" machine within the same limits. (I do not refer to city business.) Moreover, my local business is naturally increased or diminished just in proportion as I make much or little effort to do a general or wholesale trade. As, for example, newspaper advertising is altogether too general and ex-

tended to be available for local trade alone, and yet city business is largely dependent upon advertising. This is intended as a partial answer to Mr. Southworth's query, "Can you not sell more Willcox & Gibbs machines?"

Yours very truly, D. S. EWING.

269 NEW YORK, *October* 10*th*, 1879.

Daniel S. Ewing, Esq., Philadelphia, Penn.

D'R SIR: The Willcox & Gibbs Sewing Machine Co. hereby give notice that the agreement heretofore entered into between them and you, bearing date the fifteenth day of October, 1874, will be abrogated by the said company at the expiration of sixty days from the date hereof, and that the said agreement after that date will be of no further force or effect. In the meantime, the company will be ready and willing to take off your hands the store now occupied by you, and they will purchase, if you desire to sell, the fixtures contained in the store at a just valuation. They will also purchase all stock which you have on hand which has been obtained from the said company, in accordance with the terms of their contract. Should you be desirous of terminating the said agreement at an earlier period than the time herein designated, the company will join with you in an agreement for such earlier termination of the contract.

Yours, WILLCOX & GIBBS S. M. CO.
J. PARMLY, JR., *Treas.*

270 OCT. 13, 1879.

Messrs. Wilcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: Your registered letter of the 10th inst. is at hand; in reply to which I would advise you that I do not accept notice for the abrogation of contract existing between us, for the reason that I deny your rights thus or by any arbitrary process to determine said contract. Should you wish to open negotiations for the purchase of any thing, right, or privilege, which I hold that may be of value to you, I shall be pleased to receive communications bearing upon the subject.

Yours very truly, D. S. EWING.

271 N. Y., *July* 15*th*, '74.

Mr. D. S. Ewing, Phila..

DEAR SIR: Is not your new location the office of the Secor machine, 1127 Chestnut St.?

We hope you are not thinking of joining the sale of the two machines from one store.

Yours, &c., J. PARMLY, JR., *Sec'y.*

272 720 CHESTNUT ST., PHILA., *July* 16*th*, 1874.

J. Parmly, Jr., Esq., sec'y W. & G. S. M. Co.

DEAR SIR: Your favor of 15th inst. at hand. I am glad of an opportunity to explain that my original object in opening the store

at Eighth and Walnut Sts. was to dispose of such other machines as I frequently took in exchange for the Willcox & Gibbs, so as not to associate with the Willcox & Gibbs at my principal office, No. 720 Chestnut St., any other machine, either new or old. This purpose I have strictly adhered to, and have had no idea whatever of changing my mind in this regard in my removal from 720 to 1127 Chestnut St.

I have secured a very desirable store, 135 x 23 feet, in a somewhat better location, inasmuch as retail trade is moving uptown, and I am having it put in excellent condition, with modern fixtures and furniture, expressly for the sale of the Willcox & Gibbs machines (and of no others). I trust that my calculations and disposition to increase the sale of the "Willcox & Gibbs" may be fully realized. I wish you might come on and see my new quarters in about a month.

Yours truly, D. S. EWING.

273 N. Y., *July 18th*, '74.

D. S. Ewing, Esq., Phila., Pa.

DEAR SIR: Yours of 15th inst. received. Thanks. Glad of information in yours of 16th. We should have very much regretted any step looking like combination in your city.

If you will let me know when your flag is put out at the new store I will take pleasure in going over to see you. We hope the sale of our machine will be largely increased from your office. The number of machines bought in 1873 and ½ 1874 seems "amazing few."

Yours, &c., J. PARMLY, JR., *Sec'y.*

274 PHILADELPHIA, *Oct. 14th*, 1879.

Messrs. Willcox & Gibbs S. M. Co., 658 Broadway, New York.

GENTLEMEN: I have immediate use for the 12 "No. 5" machines ordered from you on 11th inst., and you will please forward them without delay; also please book my order for 12 "No. 5" New Automatic machines, to be shipped on 20th inst. by the Penna. railroad. The prospects of a largely increased business this season are very encouraging. Last month my sales of "New Automatic" machines were more than double the sales of August.

Yours very truly, D. S. EWING.

275 And thereupon the counsel of the defendant submitted the following points:

Defendant's Points.

The court is requested to charge the jury as follows:

1. The contract of 1874 between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by the plaintiff, was revocable at will on the part of the defendant; and the defendant having exercised this right, there can be no recovery, and the verdict must be for the defendant.

2. The contract of 1874 between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by the plaintiff, was revocable at any time, upon reasonable notice being given by either party to the other. The uncontradicted evidence being that sixty days' notice of the revocation of the contract was given by the defendant to the plaintiff, the contract thereupon terminated, and there can be no recovery for breach thereof after the expiration of the said sixty days, and the verdict must be for the defendant.

3. The rights of the parties are to be determined by the agreement of October 15, 1874, and the subsequent reaffirmance thereof by the plaintiff of February 16, 1877, and there is no parol
276 evidence in the cause sufficient to alter or modify the terms of those written agreements.

4. If the jury, from all the evidence, believe that the plaintiff violated the spirit of the agreement of October 15, 1874, their verdict must be for the defendant.

5. If the jury, from all the evidence, believe that for more than a year preceding October 10, 1879, the plaintiff had failed to devote his time, attention, and abilities primarily to the forwarding of the interest of the defendant, their verdict must be for the defendant.

6. Under all the evidence the verdict must be for the defendant.

WAYNE MACVEAGH,
Att'y for Defendant.

277 And thereupon the court charged the jury as follows:

Judge BUTLER:

The first two points presented by the defendants involved matters of law which would take the case from the jury, and these points may be reserved. In the last point the court is asked to take the case from the jury, and I suppose, inasmuch as the court cannot do that, it should be disallowed at this time. I think the other points will be found to be answered in the charge of the court which I propose to deliver. If they are not, I will notice them more fully upon the suggestion of counsel. I shall have very little to say to the jury.

This suit, gentlemen, as you have learned, is founded on the contract of Oct., 1874, and upon that and the evidence relating to it alone. By this contract the plaintiff acquired a right to purchase sewing-machines at a specified discount from the retail price and to sell them in the city of Philadelphia and its vicinity to the exclusion of other vendors here. They might be sold elsewhere and might be brought here, but the plaintiff's right to canvass and to sell here within this territory was exclusive. In part consideration for this right the plaintiff undertook to devote his time attention,
278 and abilities primarily to forwarding the defendants' interests in selling the machines. At the date of this contract the plaintiff was and for several years had been engaged in the sale of the defendants' sewing-machines under the previous contract, which was abrogated by that sued upon, and was doing a considerable

business. This business was continued under the new contract, as you have learned, with varying success until Oct., 1879, when the defendants notified the plaintiff of their purpose to abrogate the contract at the end of sixty days. At the expiration of this period the defendants treated the contract as abrogated and refused thereafter to furnish machines and entered upon the business of soliciting trade and selling here regardless of the plaintiff's protest. The plaintiff charges that this conduct was a violation of the contract and a disregard of his rights under it; that his business in the sale of these machines, which he says was valuable, was thus destroyed, and he now sues to recover damages for the loss sustained. The defendants have undertaken to justify their conduct in giving the notice and withdrawing from the contract by showing, or endeavoring to show, that the plaintiff failed to devote his time, attention, and abilities primarily to forwarding the defendants' interests in selling the machines as required by the contract.

279 If the defendants have satisfied you that the plaintiff failed to comply with his contract in this respect, then you must find that they were justified in giving the notice and refusing to deliver machines; otherwise, if you do not so find, you must conclude that the defendants were not justified. In other words, if you do not find that the plaintiff failed in his duty in this respect, then you must find that the defendants' conduct in giving the notice and withdrawing from the contract was not justified.

Thus the case turns, as you see and have understood, upon two questions—first, did the plaintiff fail to comply with his contract in the particular referred to?

All the evidence before you relating to this question is that furnished by the plaintiff or elicited by a cross-examination of his witnesses. From this testimony you must determine how this question should be decided. The plaintiff engaged in the sale of other sewing-machines than the defendants'. This, however, he had a right to do, provided he did not allow it to interfere with the sale of the defendants' machines, as it was his duty, clearly his duty, to devote all the time and attention to selling the defendants' machines that could be so bestowed to advantage. He could not allow anything to interfere with the discharge of this duty.

Did he allow the sale of other machines to interfere? Did
280 he allow it to withdraw his attention and efforts to any extent whatever from the sale of the defendants' machines?

You have seen that the sales of the defendants' machines after a time fell off while the sales of other machines increased. Was this falling off the result of diminished efforts and time devoted to selling the defendants' machines, as charged by the defendants, or was it the result of obstacles placed in his way by the defendants through tardiness in delivering machines, unwarrantably, if he did so, changing prices and discounts, or other conduct on the part of the defendants, as alleged by the plaintiff? The defendants also appeal to the plaintiff's advertisements of machines and to the correspondence between the parties as further evidence that the plaintiff failed to observe his contract in this respect. The plaintiff and other

2. The contract of 1874 between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by the plaintiff, was revocable at any time, upon reasonable notice being given by either party to the other. The uncontradicted evidence being that sixty days' notice of the revocation of the contract was given by the defendant to the plaintiff, the contract thereupon terminated, and there can be no recovery for breach thereof after the expiration of the said sixty days, and the verdict must be for the defendant.

3. The rights of the parties are to be determined by the agreement of October 15, 1874, and the subsequent reaffirmance thereof by the plaintiff of February 16, 1877, and there is no parol
276 evidence in the cause sufficient to alter or modify the terms of those written agreements.

4. If the jury, from all the evidence, believe that the plaintiff violated the spirit of the agreement of October 15, 1874, their verdict must be for the defendant.

5. If the jury, from all the evidence, believe that for more than a year preceding October 10, 1879, the plaintiff had failed to devote his time, attention, and abilities primarily to the forwarding of the interest of the defendant, their verdict must be for the defendant.

6. Under all the evidence the verdict must be for the defendant.

WAYNE MACVEAGH,
Att'y for Defendant.

277 And thereupon the court charged the jury as follows:

Judge BUTLER:

The first two points presented by the defendants involved matters of law which would take the case from the jury, and these points may be reserved. In the last point the court is asked to take the case from the jury, and I suppose, inasmuch as the court cannot do that, it should be disallowed at this time. I think the other points will be found to be answered in the charge of the court which I propose to deliver. If they are not, I will notice them more fully upon the suggestion of counsel. I shall have very little to say to the jury.

This suit, gentlemen, as you have learned, is founded on the contract of Oct., 1874, and upon that and the evidence relating to it alone. By this contract the plaintiff acquired a right to purchase sewing-machines at a specified discount from the retail price and to sell them in the city of Philadelphia and its vicinity to the exclusion of other vendors here. They might be sold elsewhere and might be brought here, but the plaintiff's right to canvass and to sell here within this territory was exclusive. In part consideration for this right the plaintiff undertook to devote his time, attention,
278 and abilities primarily to forwarding the defendants' interests in selling the machines. At the date of this contract the plaintiff was and for several years had been engaged in the sale of the defendants' sewing-machines under the previous contract, which was abrogated by that sued upon, and was doing a considerable

business. This business was continued under the new contract, as you have learned, with varying success until Oct., 1879, when the defendants notified the plaintiff of their purpose to abrogate the contract at the end of sixty days. At the expiration of this period the defendants treated the contract as abrogated and refused thereafter to furnish machines and entered upon the business of soliciting trade and selling here regardless of the plaintiff's protest. The plaintiff charges that this conduct was a violation of the contract and a disregard of his rights under it; that his business in the sale of these machines, which he says was valuable, was thus destroyed, and he now sues to recover damages for the loss sustained. The defendants have undertaken to justify their conduct in giving the notice and withdrawing from the contract by showing, or endeavoring to show, that the plaintiff failed to devote his time, attention, and abilities primarily to forwarding the defendants' interests in selling the machines as required by the contract.

279 If the defendants have satisfied you that the plaintiff failed to comply with his contract in this respect, then you must find that they were justified in giving the notice and refusing to deliver machines; otherwise, if you do not so find, you must conclude that the defendants were not justified. In other words, if you do not find that the plaintiff failed in his duty in this respect, then you must find that the defendants' conduct in giving the notice and withdrawing from the contract was not justified.

Thus the case turns, as you see and have understood, upon two questions—first, did the plaintiff fail to comply with his contract in the particular referred to?

All the evidence before you relating to this question is that furnished by the plaintiff or elicited by a cross-examination of his witnesses. From this testimony you must determine how this question should be decided. The plaintiff engaged in the sale of other sewing-machines than the defendants'. This, however, he had a right to do, provided he did not allow it to interfere with the sale of the defendants' machines, as it was his duty, clearly his duty, to devote all the time and attention to selling the defendants' machines that could be so bestowed to advantage. He could not allow anything to interfere with the discharge of this duty.

280 Did he allow the sale of other machines to interfere? Did he allow it to withdraw his attention and efforts to any extent whatever from the sale of the defendants' machines?

You have seen that the sales of the defendants' machines after a time fell off while the sales of other machines increased. Was this falling off the result of diminished efforts and time devoted to selling the defendants' machines, as charged by the defendants, or was it the result of obstacles placed in his way by the defendants through tardiness in delivering machines, unwarrantably, if he did so, changing prices and discounts, or other conduct on the part of the defendants, as alleged by the plaintiff? The defendants also appeal to the plaintiff's advertisements of machines and to the correspondence between the parties as further evidence that the plaintiff failed to observe his contract in this respect. The plaintiff and other

witnesses who were employed about his business tell you what efforts were made to sell the defendants' machine—in effect, that he left nothing undone that it was reasonably practicable to do in finding purchasers and making sales.

From all the testimony bearing upon this question, and you will be careful to overlook none of it and to bear in mind the comments of counsel respecting it—from all the evidence bearing upon this question you must determine whether
281 the plaintiff failed to comply with his contract, as charged.

Could he have sold more of the defendants' machines if he had given more time and attention to it? Did his sale of other machines interfere with the selling of the defendants'? If you believe it did; that he could have sold more by devoting more time and attention, then you must believe that he failed in his duty in this respect; otherwise not. If you find he did fail, your verdict must be against him without going further. Such failure, as before indicated, would justify the defendants in giving the notice and withdrawing from the contract. On the other hand, if you do not find that he so failed in his duty, then the defendants were not justified in withdrawing, and in such case your verdict must be for the plaintiff, and in that event in a sum sufficient to compensate for the loss he has sustained by reason of this withdrawal by the defendants.

Thus, you observe, if you find this point in the plaintiff's favor, a second question arises, to wit, What loss has the plaintiff sustained? What business had he arising from the sale of these machines at the time the defendants withdrew from the contract? What was the business in these machines which he was then doing worth?

As bearing on this question, the plaintiff was permitted to
282 show what he paid the defendants when he originally took the business of selling the machines here from them, in 1867; how much of the sum then paid, if any part, was paid for the good will of the business; how much for the machines and other property then transferred, you must judge. He has also produced evidence of what he sold one-half, as he says, of the good will for subsequently and what he paid on taking it back. Was the business he lost when the defendants withdrew from this contract similar in amount and value to the business transferred to him in 1867 or possessed by him at the time of the subsequent transaction, when he sold a half of the good will, and at a later period when he purchased it back?

It must be carefully borne in mind that the testimony respecting these former transactions—old transactions, as they may, I think, justly be called to distinguish them—the evidence respecting these transactions was admitted only for the purpose of shedding light upon the value of the business lost in 1879. It is of no value whatever, and cannot be used for any other purpose in the cause. The suit, I repeat, as before said, is on the contract of 1874, and all the rights of the plaintiff have grown out of that contract. You must also bear in mind that on Feb. 15, 1877, after the parties had been

in controversy for some time, the plaintiff settled with the
283 defendants all claims for alleged injuries up to that date. His receipt for $422.00 paid him in compromise of his claims on that account show this. The injury now to be compensated and the only injury to be compensated, if he is entitled to recover, is the injury to his business in these machines, not any other business, at the time the defendants abrogated the contract in 1879. This is the business, the value of which you must find if your verdict is for the plaintiff. What was it, I repeat again, worth—that business which he had in 1879? Had it gone down to any extent? How much had it gone down? What business was he then doing in these machines? For it is the loss of that business for which he has sued and declared and for which he presses his case. What was it at that time and what was it worth? If he is entitled to recover he is entitled to recover that; no more, no less.

Now, in conclusion, gentlemen, the case, as you see, presents these two questions: First, did the plaintiff violate his contract as the defendants charged? If you find he did, your verdict must be for the defendants. If, on the other hand, you do not find that the plaintiff violated his contract, then you must decide the second question, to which I have alluded. What injury resulted to
284 the plaintiff from the defendants' withdrawal from the contract? What business had he in these machines at that time? What was it worth, and what, consequently, was his loss?

Mr. JOHNSON: I neglected to ask your honor to say that whatever damages the jury find, if any, in Oct., 1879, would bear interest up to this date.

The COURT: That is true. I had in my mind the subject of damages in a different class of cases. It is true that whatever damage you find the plaintiff sustained from the loss of this business at the period referred to, to make him whole, must have interest from that date added to it, and your verdict would be for the entire amount.

(Counsel for defendants excepts to the disaffirmance of the last point.)

285 And afterwards the plaintiff moved for judgment, *non obstante veredicto*, on the first and second points reserved; and thereafter, at a circuit court of the United States for the eastern district of Pennsylvania, held at Philadelphia June 22nd, 1888, the court denied the said motion and disaffirmed the said points.

286 And thereupon the counsel for the said Willcox and Gibbs Sewing Machine Company did then and there except to so much of the aforesaid charge and opinion of the said court as is embodied in the answer to the above points, 1, 2, and 6; and inasmuch as the said charge and opinion so excepted to do not appear upon the record—

The said counsel for the said Willcox and Gibbs Sewing Machine Company did then and there tender this bill of exceptions to the opinion and rulings of the said court upon said 1, 2, and 6 points, and requested the seal of the judge aforesaid should be put to the

same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judge, at the request of the said counsel for the Willcox and Gibbs Sewing Machine Company, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 26th day of June, A. D. 1888.

(Signed) WM. BUTLER. [L. S.]

287 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. October Sess., 1886.

DANIEL S. EWING, Plaintiff,
vs.
THE WILLCOX AND GIBBS SEWING MACHINE COMPANY, Def't. } No. 17.

Know all men by these presents that we, the Willcox and Gibbs Sewing Machine Company and the American Surety Company, are held and firmly bound unto Daniel S. Ewing in the full and just sum of thirty thousand dollars, to be paid to the said Daniel S. Ewing, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of June, A. D. 1888.

Whereas, lately, at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between the said Daniel S. Ewing and the said Willcox and Gibbs Sewing Machine Company, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the afore-

288 said suit, and a citation directed to the said plaintiff, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now, the condition of the above obligation is such that if the said Willcox and Gibbs Sewing Machine Company shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLCOX & GIBBS S. M. CO. [SEAL.]
J. PARMLY, *Treas.*
AMERICAN SURETY COMPANY.
HENRY D. WELSH, [SEAL.]
Vice-President.
Attest: STEPHEN W. WHITE, *Ass't Secretary.*

Sealed and delivered in presence of—
S. A. SWART.
THEO. P. TAUNE.

Surety approved (def't assenting).
WM. BUTLER, *Judge.*

[Endorsed:] No. 17. October sess., 1886. Circuit court United States. Daniel S. Ewing *vs.* Willcox & Gibbs Sewing Machine Company. Bond surwrit of error. Approved and filed Jul- 3, 1888. Samuel Bell, clerk.

289 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Daniel S. Ewing *vs.* The Wilcox and Gibbs Sewing Machine Company, No. 17, October session, 1886, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 13th day of July, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

[Endorsed:] No. —. —— sessions, 188–. Circuit court United States, eastern district of Pennsylvania. Certified copy.

290 In the Supreme Court of the United States.

WILCOX AND GIBBS SEWING MACHINE COMPANY }
vs.
DANIEL S. EWING. }

Assignment of Errors.

And now, to wit, on the second Monday in October, 1888, before the justices of the Supreme Court of the United States, comes the Wilcox & Gibbs Sewing Machine Company, by Wayne MacVeagh, its attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. The circuit court of the United States for the eastern district of Pennsylvania erred in admitting in evidence and permitting to be read to the jury the memorandum of agreement, dated October 15th, 1874, executed prior to the execution of the agreement sued upon. Rec., orig., p. 1.

2. The said circuit court erred in admitting any evidence as to the transactions between the parties at dates prior to the execution of the contract sued on, October 15th, 1874. Rec., orig., p. 2–8.

3. The said circuit court erred in admitting any evidence as to values of plaintiff's business prior to the execution of the contract sued upon. Rec., orig., p. 2–8.

291 4. The said circuit court erred in admitting in evidence and permitting to be read to the jury the contract of May 16th, 1867, and the receipt given thereon. Rec., orig., p. 8 to 10.

5. The said circuit — erred in refusing to strike out all evidence given as to transactions between the parties prior to the date of the contract sued on, and as to value of the plaintiff's business prior to the said date. Rec., orig., p. 12.

6. The said circuit court erred in permitting plaintiff, Daniel S. Ewing, to testify as to the value of his business, or of any alleged good will thereof in 1867. Rec., orig., p. 13.

7. The said circuit court erred in permitting the plaintiff to testify as to the comparative value of the alleged good will of his business or the privilege of selling the defendant's machines in 1874 and 1867. Rec., orig., p. 16.

8. The said circuit court erred in permitting the plaintiff to testify as to conversation or conversations between the parties prior to the execution of the contract and receipt of February 15th, 1877. Rec., orig., 21, 22, 25.

292 9. The said circuit court erred in admitting in evidence and permitting to be read to the jury the letters which passed between the parties and which passed between the plaintiff and the treasurer of the company prior to the execution of the receipt and contract of February 15th, 1877. Rec., orig., p. 36, 37.

10. The said circuit court erred in admitting any evidence as to conversations between the parties or the representatives of either subsequent to the letters of July 15th, 16th, and 18th, 1874, and prior to the execution of the contract sued on. Rec., orig., 63, 64.

11. The said circuit court erred in permitting the witness, Joseph F. Broomall, to testify as to occurrences at the plaintiff's store, or conversations between the witness and the plaintiff in May, 1878. Rec., orig., p. 83.

12. The said circuit court erred in not affirming the defendant's first point, which point was as follows:

"The contract of 1874 between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by the plaintiff, was revocable at will on the part of the defendant; and the defendant having exercised this right, there can be no recovery, and the verdict must be for the defendant."

293 13. The said circuit court erred in not affirming the defendant's second point, which point was as follows:

"The contract of 1874 between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by the plaintiff, was revocable at any time upon reasonable notice being given by either party to the other. The uncontradicted evidence being that sixty days' notice of the revocation of the contract was given by the defendant to the plaintiff, the contract thereupon terminated, and there can be no recovery for breach thereof after the expiration of the said sixty days, and the verdict must be for the defendant."

14. The said circuit court erred in not affirming the defendant's sixth point, which point was as follows:

"Under all the evidence the verdict must be for the defendant."

15. The said circuit court erred in declining the defendant's sixth point, which point was as follows:

"Under all the evidence the verdict must be for the defendant."

16. The said circuit court erred in not entering judgment for the defendant, *non obstante veredicto*, on the defendant's first point reserved.

294 17. The said circuit court erred in not entering judgment for the defendant, *non obstante veredicto*, on the defendant's second point reserved.

18. The said circuit court erred in entering judgment for the plaintiff on the defendant's first point reserved.

19. The said circuit court erred in entering judgment for the plaintiff on the defendant's second point reserved.

And the said Wilcox and Gibbs Sewing Machine Company prays that the final judgment of the said circuit court of the United States for the eastern district of Pennsylvania be reversed, annulled, and set aside, and judgment entered by this Supreme Court of the United States for the said Willcox and Gibbs Sewing Machine Company.

WAYNE MACVEAGH,
J. H. B.,
Att'y for Plaintiff in Error.

295 [Endorsed:] In the Supreme Court of the United States. 1888, Oct. term. No. 1043. Willcox & Gibbs S. M. Co. *vs.* Daniel S. Ewing. Assignment of errors. Filed Oct. 23, '88. MacVeagh.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 698. The Willcox and Gibbs Sewing Machine Company, plaintiff in error, *vs.* Daniel S. Ewing. Filed July 23d, 1888.

Office Supreme Court, U. S.
FILED
OCT 17 1891
JAMES H. McKENNEY

No. 64. October Term, 1891.

IN THE

Supreme Court of the United States.

The Willcox & Gibbs Sewing Machine Company,
Plaintiff in Error,

vs.

Daniel S. Ewing Defendant in Error.

BRIEF OF PLAINTIFF IN ERROR.

A. H. WINTERSTEEN,
WAYNE MacVEAGH,
For Plaintiff in Error.

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

The Willcox & Gibbs Sewing Machine Company, Plaintiff in Error, vs. *Daniel S. Ewing, Defendant in Error.*	October Term, 1891. No. 64.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The action in the court below was trespass on the case, brought by Daniel S. Ewing against the Willcox & Gibbs Sewing Machine Company, to recover from the said company damages for the alleged breach of a contract of agency, held by the plaintiff for the sale of the machines of the defendant. The contract declared on was entered into October 15th, 1874, and is set forth on pages 66 and 67 of the Record. It provided by its terms that the plaintiff should, in consideration of his undertaking to purchase the defendant's machines, parts, and accessories, to devote his time, attention, and abilities primarily to forwarding the interests of the defendant, and to fulfill other obligations entered into by him, become the defendant's vendor for its machines, parts, and accessories in and for the city of Philadelphia and certain adjacent territory. The defendant undertook to supply to the plaintiff its machines and parts at sixty per cent. discount from its then New York retail price list, and its needles, attachments, silk, and cotton at its lowest wholesale prices, the right of

change in retail prices, and of a general revision of discounts, being, however, reserved to the defendant, with the stipulation that, in the event of such change and revision, the plaintiff should be as favorably considered as on the basis then established. The defendant reserved the right to sell its machines and accessories at full retail prices in the territory covered by the contract. The effect of the contract, so far as the plaintiff's rights were concerned, was that he obtained the right to procure at a discount as many machines as he might need, with a stipulation that the defendant would not sell to other parties within the territory at lower than the retail price.

No period for the continuance of the agency was fixed by the contract. But it was provided that, if for any reason the connection should cease, the defendant might buy back from the plaintiff any of its goods sold under the terms of the contract. The defendant recognized the plaintiff as its agent, and supplied him with the material as the contract provided until the fall of 1879. During the period of the life of the contract there was considerable friction between the parties. The plaintiff complained of unsatisfactory discounts, and the defendant complained of the plaintiff's inadequate sales and poor business returns to it. Continual efforts at healing the differences were made, but without success. The defendant especially complained of the plaintiff's inefficiency and his failure to develop its business satisfactorily. Finally, in 1879, when the business done by the plaintiff for the defendant for the two preceding years had fallen off very considerably, with no apparent expectation of a recuperation, although the plaintiff's business, in connection with competitive sewing-machines, continually increased, the defendant concluded to exercise what it considered to be its right of terminating the relation under the contract, and October 10th, 1879, notified the plaintiff that at the expiration of sixty days the agreement would terminate, and thereafter the plaintiff would cease to be its agent. As bearing on the cause of the termination of the agency by the defendant, it appears of record (pages 37–38), that while in 1876 and 1877 the plaintiff's sales

of rival machines were small in comparison with those of the defendant, in 1878 and 1879 they represented the chief part of the plaintiff's business. In 1876 the sale of Willcox & Gibbs machines amounted to $48,760.48; other machines, $1449.88. In 1877 Willcox & Gibbs machines, $35,936.46; other machines, $1898.97. In 1878 Willcox & Gibbs machines, $21,-102.93; other machines, $41,858.87. In 1879 Willcox & Gibbs machines, $14,531.51; other machines, $48,259.27. In accorddance with the notification of termination of the contract for cause and in the exercise of its right, the defendant at the end of sixty days treated the agency as terminated and the plaintiff was no longer recognized as its agent. The plaintiff refused to concede the existence of this right of terminating the relation, and brought suit for damages, alleging serious loss by the defendant's action.

At the trial the jury, upon the rulings of the trial judge, determined the questions of fact that arose favorably to the plaintiff, and gave him a verdict of $15,000. Among the points submitted by the defendant at the trialwere two based upon the propositions, first, that the contract declared upon was terminable at will, and, secondly, that it was terminable upon reasonable notice, which notice was given. The court reserved the points, and subsequently entered judgment upon them in favor of the plaintiff, refusing the defendant's motion for judgment *non obstante veredicto*. A general judgment on the verdict for the plaintiff was also entered. Thereupon this writ of error was taken.

SPECIFICATIONS OF ERROR.

First Specification.—The court below erred in admitting in evidence, and permitting to be read to the jury, a memorandum of agreement, dated October 15th, 1874, executed prior to the agreement sued upon.

Record, page 14.

This memorandum of agreement is printed in the Record, page 65.

Second Specification.—The court below erred in admitting in evidence, and permitting to be read to the jury, the agreement of May 16th, 1867, and the receipt given thereon. Record, page 17.

This agreement and receipt are printed in the Record, pages 63–65.

Third Specification.—The court below erred in admitting any evidence as to the values of the plaintiff's business prior to the execution of the contract sued upon.

Fourth Specification.—The court below erred in refusing to strike out all evidence given as to the value of the plaintiff's business prior to the date of the contract sued upon.

Fifth Specification.—The court below erred in permitting the plaintiff to testify as to the value of his business, or of any alleged good-will thereof, in 1867.

Sixth Specification.—The court below erred in permitting the plaintiff to testify as to the comparative value of the alleged good-will of his business, or the privilege of selling the defendant's machines, in 1874 and 1867.

The evidence objected to by the third, fourth, fifth, and sixth specifications is found in the Record, pages 17 to 21. The plaintiff, under objection, testified in substance that in 1867 he paid the defendant $25,398.48 for certain property in connection with his business, and estimated a portion of the property so purchased as good-will; that he sold one-half of the interest in the good-will almost immediately for $7500, and subsequently bought it back for the same amount; and that the value of the agency under the contract of 1874 was greater than the alleged good-will or privilege conferred by the contract of 1867.

Seventh Specification.—The court below erred in not affirming the defendant's first point, and in subsequently refusing to enter judgment *non obstante veredicto* thereupon for the defendant.

The said first point was as follows: "The contract of 1874, between the plaintiff and the defendant, for the abrogation of which the action is brought by plaintiff, was revocable at will on the part of the defendant; and the defendant, having ex-

ercised this right, there can be no recovery, and the verdict must be for the defendant."

Record, page 103.

Eighth Specification.—The court below erred in not affirming the defendant's second point, and in subsequently refusing to enter judgment *non obstante veredicto* thereupon for the defendant.

The said second point was as follows: "The contract of 1874, between the plaintiff and the defendant, for the alleged abrogation of which the action is brought by plaintiff, was revocable at any time upon reasonable notice being given by either party to the other. The uncontradicted evidence being that sixty days' notice of the revocation of the contract was given by defendant to plaintiff, the contract thereupon terminated, and there can be no recovery for breach thereof after the expiration of the said sixty days, and the verdict must be for the defendant.

Record, page 104.

Ninth Specification.—The court below erred in not affirming the defendant's sixth point.

The said sixth point was as follows: "Under all the evidence the verdict must be for the defendant."

Record, page 104.

A BRIEF OF THE ARGUMENT.

The several specifications of error divide themselves into two groups, those relating to the plaintiff's right of action, and those bearing on the admission of evidence. The argument naturally, therefore, outlines itself in the form of two propositions:—

I. The contract sued on was revocable at will, or was revocable upon the giving of reasonable notice. The said notice having been given, no action lies for the alleged breach based solely upon refusal to continue the privileges of the contract in force.

II. The court erred in admitting in evidence the prior contracts of 1867 and 1874; in admitting evidence of the value of the plaintiff's business in 1867, and prior to the date of the contract sued on; and in admitting evidence of the comparative value of the said business in 1867 and 1874.

I.

The contract sued on was revocable at will, or was revocable upon the giving of reasonable notice. The said notice having been given, no action lies for the alleged breach based solely upon refusal to continue the privileges of the contract in force.

The contract in suit must be construed either as a contract of sale from the defendant to the plaintiff of the right to sell the material and machines in a certain territory for a valuable consideration, or as an agreement that the plaintiff should act as the defendant's agent for the sale of its materials and machines. It cannot be considered a contract of sale because the agreement itself (Record, page 66), as recited in the declaration, recites the *appointment* of the plaintiff as the defendant's vendor, and that the plaintiff accepted such appointment, and refers to persons acting for him as subvendors or agents, and that trade must not be solicited by him in the territory of *other agents*. It makes certain provisions "if for any reason at any time the connection hereby formed should cease." It stipulates that the contract may be abrogated at any time for violation of the spirit thereof, and finally refers specifically to the entire contract as "*said appointment or agency*." The contract must, therefore, be considered as one of agency, and must be governed, so far as the question of its revocability by the defendant is concerned, by the law of principal and agent.

The first thing observable in the agency is that no period is named for its termination. Unless, therefore, there is a property in it peculiar to it from its terms, it is well settled a reasonable notice is the most that is necessary for either party to terminate it.

It is elementary law established by a long line of decisions that the principal may revoke the authority of his agent at his mere pleasure, although in its terms the authority may be expressly declared to be irrevocable. The only exceptions to this rule are, first, when the authority or power is coupled with an interest; second, when it is given for a valuable consideration; and, third, when it is a part of a security for money paid.

Walker *vs.* Dennison, 86 Ills., 142.

But the interest coupled with the power, in order to bring the case within the exception and to make the agency irrevocable, must be an interest in the thing itself, or in the property which is the subject of the power. In other words, the power and estate must be united and coexisting. A mere interest in the result of the agency, as, for example, in the proceeds of the sale of the property which is the subject of the agency, is not sufficient.

Chambers *vs.* Seay, 63 Ala., 372.

Said this court in Missouri *ex rel.* Walker *vs.* Walker, 125 U. S., 339, 342, 343, "The interest coupled with a power, to make it irrevocable, must be an interest in the thing itself. As was said by Chief Justice Marshall in Hunt *vs.* Rousmanier, 8 Wheat., 174, 204, 'the power must be engrafted on an estate in the thing. The words themselves seem to import this meaning. A power coupled with an interest is a power which accompanies or is connected with an interest. The power and the interest are united in the same person. But if we are to understand by the word "interest" an interest in that which is to be produced by the exercise of the power, then they are never united. The power, to produce the interest, must be exercised, and by its exercise is extinguished. The power ceases when the interest commences, and, therefore, cannot, in accurate law language, be said to be "coupled" with it.' Such is undoubtedly the rule."

In Swart *vs.* Sanders, 57 Eng. Com. L. R., 895, it was held that a factor to whom goods had been consigned generally for sale who had subsequently made advances to his

principal on the credit of the goods, had no right to sell them contrary to the orders of his principal on the latter neglecting on request to pay the advances—his authority to sell not becoming by reason of the unpaid advances irrevocable as an authority coupled with an interest. In the opinion the court said: "The result appears to be that where an agreement is entered into on a sufficient consideration whereby an authority is given for the purpose of securing some benefit to the donee of the authority, such an authority is irrevocable. But we think this doctrine applies only to cases where the authority is given for the purpose of being a security, not to cases where the authority is given independently, and the interest of the donee of the authority arises *afterwards* incidentally only."

In Blackstone *vs.* Buttermore, 53 Pa. St., 266, a power of attorney was given by one to another to sell lands, the first party binding himself to ratify all contracts made in pursuance thereof, and that the power of attorney should be considered irrevocable prior to a certain date. The court held this to be a revocable power of attorney, because it lacked the interest in the thing itself or the characteristic of being a security, which would make it irrevocable, and laid down the principle governing the question as follows: "*A power of attorney constituting a mere agency is always revocable.* It is only when coupled with an interest in the thing itself, or the estate which is the subject of the power, it is deemed to be irrevocable—as where it is a security for money advanced, or is used as a means of effectuating the purpose necessary to protect the rights of the agents or others. A mere power, like a will, is in its very nature revocable when it concerns the interest of the principal alone, and in such case even an express declaration of irrevocability will not prevent revocation. *An interest in the proceeds to arise as a mere compensation for the service of executing the power will not make the power irrevocable.*

In Coffin *vs.* Landis, 46 Pa. St., 426, the court held that where one as agent for another contracts to sell the lands of the latter in consideration of one-half the net proceeds

of the sales, and there is no stipulation in the contract as to duration of the employment, the principal has a right to terminate it at any time, and to discharge the agent from his service without notice. This case turned principally upon the question of whether or not the contract involved in it was a continuing one, and the court laid down the rule that a contract would not be inferred to be a continuing one; that this must appear in express terms, or be absolutely shown by the intention of the parties as set forth in the contract, and in the absence of either of these the court could no more interpolate in the contract an intention that it should be a continuing one than it could interpolate an intention that it should be terminable at will, the presumption being as strong one way as the other.

The test of whether an agency is revocable or irrevocable has been said to be whether it is of such a nature that the right to exercise it would survive the principal in the event of the latter's death so as to be capable of execution in the name of the agent.

Chambers *vs.* Seay, 63 Ala., 372;
Blackstone *vs.* Buttermore, 53 Pa. St., 266;
Borney *vs.* Smith, 17 Ills., 531;
Mansfield *vs.* Mansfield, 6 Conn., 559.

If it would be thus capable of execution by the agent in his own name upon the death of the principal it would be irrevocable; otherwise not. Tested by this rule the contract sued on was clearly revocable. In case of the death of an individual in the position of the Willcox & Gibbs Sewing Machine Company, or the legal death of that corporation by abandonment of its franchise, there would be no right in the plaintiff after the event to sell the Willcox & Gibbs sewing-machines conferred by this contract. It was an agency pure and simple. The only interest was an interest in the results of the agency; that is to say, in the profits realizable by the agent in exercising his agency, to wit, the difference between the retail price at which he sold the machines and the wholesale price at which he obtained them. It is not pretended

that the right to sell the machines conferred by the contract was given as security for a debt to him which would make it irrevocable, and there is nothing to show that a consideration passed for it to the defendant *based upon the contract of 1874*, which is the only contract in suit.

In the case of Chambers *vs.* Seay, *supra*, an owner of land containing valuable deposits of iron ore by written instrument authorized and empowered an agent to sell the land, the agent agreeing to undertake the sale, and to this end to transport specimens of the ore to England for inspection, and there to advertise the lands for sale, and by way of compensation for his services and expenses it was stipulated that the agent should receive an undivided one-fourth interest in the proceeds of the sale when sold as aforesaid. It was held that the agent's authority was not coupled with an interest in the land, and that it was not given as security for money, and that, therefore, the agency was revocable at any time before sale under the power. It was also held that the fact that in such an instrument it was expressly stipulated, as in the present case, that the agent's power to sell should be exclusive did not render the power irrevocable. Just as in the case of a naked power, an express waiver of the right of revocation would not destroy the principal's right of revocation. Said the court :—

"The plaintiff had no interest in the subject-matter of his agency—the land itself. He was interested only in the money to be derived as the proceeds of the sale of the land, which could only be realized by the completion of his agency or by some other negotiation which was tantamount to it. He had parted with no money or other value for the security of which the power of sale was conferred in the agreement? *He had risked in the venture of his agency only his personal services, and the expenses incident to its execution.* The undertaking to transport specimens of iron ore to England and to advertise the land there may be embraced as a part of the ordinary expense to be incurred in the usual course of such an employment. *It is fair to suppose that he risked this much in view of the large compensation to be received as commissions in the*

event of a successful sale." It was ruled that in a proper form of action the plaintiff would have been entitled to recover for the labor and expenses reasonably incurred in the course of his employment previous to the revocation of his agency. This, of course, would be perfectly proper, and it was practically recognized as right by the present defendant in accompanying its notice of revocation (page 102, fol. 269) by an offer to purchase the stock on hand and the store which had been purchased by the plaintiff in the course of his agency. This would compensate him for his investment, in so far as it was capable of compensation, without recognizing the prospective value in the business based upon the commissions that might be earned if the agency had not been terminated.

But the plaintiff endeavored to show that, as far back as 1867, he paid the defendant $15,000 for the good-will of the business. (Record, pages 19, 20.)

The evidence shows that the plaintiff in 1867 bought the *stock, fixtures, book-accounts, &c.*, of the Philadelphia office, formerly belonging to the defendant, for $25,398.48. At the trial he testified that the "*&c.*" meant the good-will, for which he paid $15,000—part of the above sum. This testimony by the plaintiff as to the sale of the good-will to the defendant was contradicted not only by the plain words of the contract, but by his own books, where it appeared that for value received, consisting of stock, fixtures, and moneys due under his previous dealings with the defendant, he paid the $25,398.48 in question. (Page 55, fols. 135, 136.)

But, assuming for argument's sake only, that in 1867 the plaintiff had in fact paid $15,000 for the business of selling the Willcox & Gibbs sewing-machines, it is submitted that that only affects the question of the revocability of the contract of 1867 which was entered into at the time. It could not possibly bear upon the contract of 1874, which was not in contemplation *as property in the plaintiff* at the time of the alleged purchase of the said good-will by the plaintiff. The good-will or business referred to was at best a right to sell the old Willcox & Gibbs sewing-machines conferred by

the contract of 1867. If, as he alleges, part of the money paid at the settlement in 1867 was for the business of selling the defendant's machines, it was clearly confined to the contract then in force which gave the right to sell. How can a right to sell one class of machines, viz., the old style of machines, based upon a contract subsequently annulled and satisfied, determine the existence of a right subsequently created by a distinct contract, or affect the question of the revocability of the latter contract merely because money was paid for the business contemplated to be carried on under the old contract? Clearly, it would affect the question of the revocability of the old contract, and nothing else. The parties having, by their solemn agreement, revoked and declared as *annulled and satisfied* the contract of 1867, which authorized the plaintiff to sell the defendant's machines, must be understood to have contemplated the existence thereafter of rights as declared or recognized by the new contract of 1874, and nothing else. Reasoning which would impose upon the defendant in this case at this time a liability to pay the plaintiff the value of an investment made during the existence of the contract of 1867, and whose value was largely based upon its continuance, would equally impose an indefinite liability after its termination such as no principle of law can recognize. When it is considered that the alleged purchase by Mr. Ewing of the good-will of the business of selling the defendant's sewing-machines was based solely upon conditions then existing, the unfairness of the argument is apparent, which seeks to make the consideration paid therefor a basis for estimating not only the value of subsequent contracts made under wholly different circumstances, but likewise a test of the nature of such subsequent contract in law. The contract of 1874, referring in no respect to the previous contract, or the conditions under which it was made, it is respectfully submitted, must be considered wholly by itself. It recognizes no vested right in the plaintiff to sell the defendant's machines perpetually; it knows of no investment by the plaintiff made upon the faith of its execution, for the conditions which made it necessary were not in existence when any alleged moneys were paid by the plaintiff. And, as has been seen, the agency

created by it was in no respect a power coupled with an interest, and it was not given as security for money, much less in consideration for money paid by the plaintiff. The rule of law as above stated, therefore, must apply with full force, that the agency was revocable at the will of either party, and certainly upon reasonable notice.

What is the attempted answer to this view? It is argued that the fact that by the contract it was impliedly contemplated that the right possessed by Ewing might be sold to a person satisfactory to the defendant, stamps it as an agency coupled with an interest.

This is not the proper interpretation of the provision in question, as will appear when it is considered as a whole. The contract declares, "It is agreed and understood that this *appointment* or *agency* is not salable or transferable by second party without obtaining the written consent of first party, but such consent is to be given providing the purchaser or other person is acceptable to said first party." The evident meaning of the language is that the agency as such was not a salable thing. It was a personal privilege pure and simple. Ewing had a qualified right of substitution of agency, but the value of the right was to be given it only by the subsequent action of the defendant in accepting his vendee as its agent. To argue that there was a special property in the agency which took it out of the category of ordinary agencies terminable by the principal, is to lose sight of the fact that the existence or non-existence of the property—based upon its value for purposes of sale—depended wholly upon the will of the defendant. If there was here an agency coupled with an interest, the same can be said of every agency for sale. For there are few agencies existing in which the agent's successor may not be selected by the agent himself, and where the right to act as such successor may not be sold *subject to the approval of the principal.*

Light is thrown upon the nature of this contract by a contrast of its terms with those of the contract of 1867 (pages 63–65). It was distinctly stipulated in the earlier contract

that the relationship was to be continued as long as Ewing kept a certain amount of money in the business, and conducted it energetically. And it was stated and understood to be an *interest* in a business as well as an agency.

How different is the contract of 1874? A new style of machine having been patented, a new form of contract was deemed necessary in 1874. Accordingly, the old contract was canceled and satisfied, and a new contract made wherein the fact of the cancellation and satisfaction of the old contract was specifically declared. The right acquired by the agent was no longer an interest in business, but a mere appointment, and it was so agreed to by Ewing. It is changing an incident of the contract into an essential part of it to contend that there was a property right here merely because it might be salable to a person who would be willing to take his chances of being accepted as agent by the company.

If the position taken thus far be correct, the court erred in declining the defendant's first, second, and sixth points at the trial, and the seventh, eighth, and ninth specifications of error should be sustained.

II.

The court erred in admitting in evidence the prior contracts of 1867 and 1874; in admitting evidence of the value of the plaintiff's business in 1867 and prior to the date of the contract sued on; and in admitting evidence of the comparative value of the said business in 1867 and 1874.

The above proposition presents for consideration the first six specifications of error. They are to be considered severally, but may for convenience be grouped together at this point, because they find common suggestion in the elementary rule of evidence that the evidence must tend to prove the issue.

Greenleaf on Evidence, section 51*a*.

This rule excludes all evidence of collateral facts or those which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute.

Id., section 52.

The issue before the jury, the principal fact or matter in dispute in this case, upon the view taken by the court, was simply the value of the plaintiff's agency in 1879, when the agency was revoked. Everything reasonably tending to maintain this issue was admissible; everything strictly collateral to it should have been rejected. The court first erred

1. *In admitting in evidence the memorandum of agreement of October 15th, 1874.* (Pages 14 and 65.)

This agreement, as it shows on its face, was provisional only, and was to be, as it was in fact, subsequently superseded the same day by a complete agreement, to wit, the contract in suit.

There was no assistance to the jury in permitting this agreement to be read. It threw no light on the contract in suit, for the latter was plain in its terms and was for the court to construe. It tended in no particular to show the value of the agency, and was therefore irrelevant. It was a different paper in terms from that subsequently agreed upon as expressing the minds of the contracting parties, and the admission of its contents before the jury tended therefore to obscure the issue, and to affect the jury's understanding of the meaning of the contract sued upon. This can be shown by a comparison of certain portions of these papers.

The *memorandum* of *agreement* contained the stipulation: "The first party will bill to second party its sewing-machines and parts thereof at sixty per cent. discount from New York retail price-list, and needle attachments at its lowest wholesale rates."

The final agreement made was: "The first party will sell *for the present*, to second party, its sewing-machines and parts thereof at sixty per cent. discount from its *present* New York retail price-list, and its needles, attachments, silk, and cotton at its lowest wholesale rates. In the event of a change (*the liberty to effect which is not herein intended to be restricted*) in retail prices or of a general revision of discounts by first party, the second party is to be as favorably considered then in the readjusting and fixing of discount rates to him as is extended to him on present basis of prices."

The principal subject of complaint by Ewing during the period of friction between the parties from 1875 to 1879, as the correspondence in evidence (pages 69–99) abundantly shows, was the discounts at which the sewing-machines bought by plaintiff of the defendant were billed. The defendant had the unquestioned right to revise discounts, which right was exercised once in a way, as he thought, to affect the plaintiff adversely. (Record, pages 69, 70.)

But the complaints made by Ewing of the exercise of this right tended to question its existence. (Record, page 21, fol. 64.)

The jury, being permitted to have before them the *memorandum of agreement*, which did not state accurately the rights of the parties as finally agreed upon, were doubtless confused as to the attitude of the defendant toward the plaintiff. They were practically invited to determine for themselves whether, in view of the absence of the right of revision in the *memorandum of agreement*, and its presence in the contract sued upon, the right existed et all, and whether its exercise was not a breach of contract by the defendant. The confusion doubtless existing in the minds of the jury was not removed by the judge in his charge. He did not, as he should have done, withdraw the *memorandum of agreement* and its contents entirely from the jury, and point out that it should be ignored as throwing no light on the issue, while tending to contradict the terms of the contract really existing between the parties.

The court also erred:—

2. *In admitting the contract of 1867 and the receipt thereupon.* (Pages 17 and 63.)

3. *In admitting evidence of the value of the business or of the good-will in 1867.*

4. *In admitting evidence of the comparative value of alleged good-will and business in 1867 and 1874.*

The final stipulation of the contract of 1874 was, "All contracts or agreements made prior to the date first written

above are hereby *nullified and satisfied*." The admission of the contract of 1867 as evidence of the undertaking of the parties in 1874 would therefore have been palpably absurd. It was admitted as tending to show the value of the business at the time—1867, and, inferentially, the value of another business in 1879. (Record, page 17.)

How the contract of 1867 shows the *value* of the business then is not seen. The rights then conferred had value, but there was no estimate thereof in the contract. The rights themselves standing alone could not be evidence of what they were worth. The receipt indorsed upon the contract of 1867 was evidence of the value of the property then purchased—the stock, fixtures, book-accounts, &c.—but it was not evidence of the value of the business then. This latter was sought to be shown by calling the "&c." good-will, and then attempting to prove by a division of the sum named in the receipt and by oral testimony how much this good-will, and how much the business, was worth. (Record, pages 19, 20, 21.)

But whatever value such testimony might have if the issue trying was the value of the business growing out of the contract of 1867, or owned by Ewing at that time without reference to any contract, it had no relevancy to the business connected with the contract of 1874 or the business done by Ewing at that time independent of any contract. *The plaintiff was permitted to prove the value of a very different thing from the contract in suit as a basis for estimating the value of the thing sued upon.* The rights conferred by the contract of 1867 were many and important. Ewing was given a discount of forty per cent. and three dollars per machine bought; he was given a perpetual contract, the defendant binding itself to continue him as its agent so long as he carried out the contract; he was given the exclusive sale of the defendant's machines in the whole State of Pennsylvania, except the counties of Susquehanna, Wayne, Monroe, Luzerne, Columbia, Montour, Bradford, Tioga, Warren, and Erie; also all of the State of New Jersey lying south of the north line of Mercer County, and that part of West Virginia which is supplied from Pittsburgh and Wheeling, and also a stipulation

for the addition of such parts of Ohio as received their supplies from Pittsburgh and Wheeling. (Record, page 64.)

Ewing estimated his good-will at $15,000. (Page 19.) That figure was the exact amount for which the jury gave him a verdict, so it is reasonable to suppose that the jury took the value of his contract of 1867 as the basis of the value of the agency obtained in 1874 when the latter was taken away in 1879.

But the plaintiff himself showed not only that the thing he obtained by the contract of 1874 was something very different from what the contract of 1867 gave him, but also that a large part of the peculiar value of the earlier contract came from the features of it that were taken away from him by the later one. In his letter to the treasurer of the defendant company, August 16th, 1875 (Record, page 71, fol. 173), he says: "I was quite well satisfied with the terms of the original contract of 1867 until you advised me that *it made no difference (reference) to the "new" machine*, and that you might fix an arbitrary price therefor, and further threatened to determine forthwith the line of credit to which I was justly entitled, unless I would relinquish, *without other consideration than the terms a new contract would afford, certain valuable territory for which I had paid to the company a considerable sum of money.*"

It will be recollected that the contract of 1874 in suit confined the plaintiff's territory to Philadelphia and the adjacent territory lying within a radius of ten miles, and that he was in fact deprived of the valuable territory outside of these limits, *for which, he says, he had paid the company a considerable sum of money.* Upon his own showing, therefore, a considerable part of the $15,000 he claimed to have paid for his good-will or business in 1867 represented the value of territory not given him by the contract of 1874. He never pretended that he paid more than $25,398.48 for anything in 1867. Of this amount the stock, fixtures, and book-accounts were $10,398.48 and the "&c." or good-will was $15,000. (Record, pages 65, 19.)

It is plain to demonstration that the value of the Pennsyl-

vania territory outside of Philadelphia and a radius of ten miles, and the value of the New Jersey, West Virginia, and Ohio fields, worth *a considerable sum of money*, entered into the $15,000, if such sum had ever been paid for good-will in 1867. The admission of evidence of the value of this thing to determine or throw light upon the value of another and very different thing in 1879, twelve years afterwards, contravenes the very first principles of evidence. The irrelevancy is patent. And the admission of the testimony was disastrous.

The same objection, of course, applies to the comparison of value of one contract with the other, and of the business in 1879 and 1867. For the comparison was between wholly different things, and the value of one was no criterion of the value of the other.

Authority is abundant to establish the error of this admission of testimony.

In Huntington *vs.* Attrill, 118 N. Y., 365, where the issue was as to value of certain land having no known market value, the defendants offered evidence based upon comparison with other seaside property at different places. *Held*, it was rightly rejected. Said the court, page 378, "It may be that such evidence would have furnished some guide for estimate of the value of the property, but might not. Such evidence would present collateral issues, which might, and very likely would, involve a variety of considerations having relation to similarity or difference, and to advantages and disadvantages of the different properties in numerous respects as compared with that in question. It is quite well settled that evidence of that character is not admissible upon the question of value of property in controversy."

It is not competent upon the question of the value of a certain vessel to prove the value of other vessels with which she might be compared.

Blanchard *vs.* New Jersey Steamboat Co., 59 N. Y., 292, 300.

On the question of damages for flowing land, evidence is not admissible of what respondent paid less than three years before to witness as damages for flowing his land situated on the other side of the track opposite the complainant's land, and on about the same level.

Kelliher *vs.* Miller, 97 Mass., 71;
Tyler *vs.* Matthews, 9 Gray, 177, 183;
Heinlen *vs.* Fresno Canal & Irrig. Co., 68 Cal., 35;
German Theological School *vs.* Dubuque, 64 Iowa, 736.

It is not competent upon a question as to the value of one article or the cost of one structure to prove the cost of another article or structure—an ice-house,—however close the two may resemble each other. An admission of such evidence was held to be error, as it raised a collateral issue leading to a comparison between the different structures and would not legitimately aid in determining the issue in the action.

Gouge *vs.* Roberts, 53 N. Y., 619.

"Things of different species cannot be taken into consideration in determining value."

Wharton on Evidence, section 1291.

It is sometimes said (Greenleaf on Evidence, page 78, note) that the value of any property may be proved by the value of similar property under similar conditions, the relevancy of the evidence for such purpose being always a question for the court. But the qualification distinctly excludes from consideration dissimilar property under dissimilar conditions at a remote period, as in this case.

Even were it the fact that the business of this agency in 1879 was the same, as growing out of the same contract, as that possessed by Ewing prior to 1874, evidence of value in 1867 would be too remote to determine value in 1879. The principle stated by Dr. Wharton applies: "Whether the value of a thing at a particular period may be inferred from

its value at other periods depends upon the circumstances of the case. An article whose value fluctuates greatly cannot by proof that it had a certain price a year ago be presumed to have the same value now. On the other hand, as to a thing whose value is more or less constant, proof of *recent* price in the vicinity may be material in enabling the price at the period in litigation to be adjusted. *A remote period under different conditions cannot in any view be taken as the standard.*"

Wharton on Evidence, section 1290.

To prove the value of property at a given period it is not competent to prove at what price the property sold subsequently at a public sale by trustees to whom it had been assigned in contemplation of insolvency.

McCracken *vs.* West, 17 Ohio, 16.

It is due to the court below to say that the evidence objected to, the admission of which was palpable error, was only admitted after great hesitation and with misgivings as to the correctness of the rulings made. (Record, pages 15, 16.)

That consideration, however, does not remove the injury suffered by the defendant in the actual admission of the evidence.

It is respectfully submitted that error has been established in the admission of all the evidence objected to, and that the first six specifications of error should also be sustained as well as the last three specifications considered above.

A. H. WINTERSTEEN,
WAYNE MACVEAGH,
For Plaintiff in Error.

Supreme Court U. S.
FILED
OCT 1891

No. 698. October Term, 1889.

Supreme Court of the United States.

Wilcox & Gibbs Sewing-Machine Company,
Plaintiff in Error,

vs.

Daniel S. Ewing,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

JOHN G. JOHNSON,
For Defendant in Error.

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

Wilcox & Gibbs Sewing-Machine Company	October Term, 1889.
vs.	No. 698.
Daniel S. Ewing.	

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF CASE.

The defendant is a corporation which now manufactures, and for a long time has been engaged in manufacturing, sewing-machines under patents.

In the year 1867 the plaintiff purchased from the defendant all the fixtures and merchandise to it belonging in a certain store which it had occupied, in the city of Philadelphia, under a contract entered into between himself and it, by which he was given the exclusive right to sell its machines, &c., in said city, and in certain surrounding territory. At this time he paid to it the sum of $25,398.48. At the trial he testified that a part of the consideration which he then paid, to the extent of $15,000, was for the value of the business granted to him by said contract.

His relations with the defendant were of a friendly character until the appointment as its secretary of one Parmly, who was desirous of vesting in it the right to sell its sewing-machines, by its own agents, in the territory controlled by Ewing. The difficulties thus originated culminated in October, 1874, when the plaintiff signed the contract upon which the present

suit was brought. This was prepared by Parmly, and, doubtless, was meant more thoroughly to deprive the plaintiff of the right at the time possessed by him than it really did. In his effort to effectuate a concealed intention, Parmly only used a portion of the phraseology which was necessary for his purpose. Had the words been such as he would have desired to use, he would have succeeded in converting the exclusive right to purchase and sell, in certain territory then possessed by Ewing, into a mere revocable agency. No new consideration passed between the parties. The consideration for the execution of the agreement of 1874 was the annulment of that of 1867.

After the new contract had been entered into, Parmly soon began anew his old course of obstruction and annoyance, with the result of very seriously curtailing the business plaintiff would otherwise have been able to have done thereunder. Having failed by means of these annoyances and discouragements to force Ewing to surrender his right, he revoked the contract in the year 1879, and positively refused thereafter to supply the plaintiff with any sewing-machines. Immediately upon this pretended revocation the defendant established in Ewing's territory an agency in lieu of a vendee exclusively entitled to sell.

At the trial Ewing testified fully to what had been done by the corporation, which called no witnesses and which did not, in any way, attempt to discredit or to contradict his testimony. It sought by arguments to convince the jury that Ewing had not fully performed his contract. The jury were thus charged as to what was incumbent upon Ewing :—

This, however, he had a right to do, provided he did not allow it to interfere with the sale of the defendant's machines, as it was his duty, clearly his duty, to devote all the time and attention to selling the defendants' machines that could be so bestowed to advantage. He could not allow anything to interfere with the discharge of this duty. Did he allow the sale of other machines to interfere? Did he allow it to withdraw his attention and efforts to any extent whatever from the sale of the defendants' machines? * * * From all the testimony bearing upon this question, and you will be careful to overlook none of it, and to bear in mind the comments of counsel respecting it-from all the evi-

dence bearing upon this question you must determine whether the plaintiff failed to comply with his contract as charged. Could he have sold more of the defendants' machines if he had given more time and attention to it? Did his sale of other machines interfere with the selling of the defendants'? If you believe it did, that he could have sold more by devoting more time and attention, then you must believe that he failed in his duty in this respect; otherwise not. If you find he did fail, your verdict must be against him without going further. Such failure, as before indicated, would justify the defendants in giving the notice and withdrawing from the contract. On the other hand, if you do not find that he so failed in his duty, then the defendants were not justified in withdrawing, and in such case your verdict must be for the plaintiff. And in that event, in a sum sufficient to compensate for the loss he has sustained by reason of this withdrawal by the defendants.

The jury found in favor of the plaintiff and assessed the damages at $15,000. In view of the fact that the breach of contract occurred about nine years before the trial, this verdict really represented an assessment of the damages occasioned, as of the date of the breach, of about $9750.

It is hardly necessary to consume time in meeting insinuations, made in the paper-book of plaintiff in error, in view of the fact that the defendant, at the trial, was unable to offer any testimony contradictory of the plaintiff, and that the jury, fairly charged, found against it.

ARGUMENT FOR DEFENDANT IN ERROR.

We will consider three propositions:—

I. The contract in suit was one of sale, not of agency.

II. The contract of 1867 was properly admitted in evidence.

III. The value paid to the defendant by the plaintiff for the exclusive right to sell its sewing-machines in 1867, in connection with the oral testimony, was pertinent to the issue raised as to the amount of damages due the plaintiff.

1. The Contract in Suit was One of Sale, not of Agency.

The plaintiff in error argues at great length that an agency, not coupled with an interest, is revocable at will, and that the right of an agent to receive compensation for his services out of the proceeds of sale is not an "interest" within the meaning of the law.

We take no issue with it upon this point. We merely say that the contract under discussion was not one of agency.

It asserts that the contract was not one of sale, "because "the agreement itself, as recited in the declaration, recites the "appointment of the plaintiff as the defendant's vendor, and "that the plaintiff accepted such appointment, and refers to "persons acting for him as sub-vendors or agents, and that "trade must not be solicited by him in the territory of other "agents. * * * It stipulates that the contract may be ab-"rogated at any time for violation of the spirit thereof, and "finally refers specifically to the entire contract as said appoint-"ment or agency."

As we have said, Parmly did endeavor to interpolate into the contract certain words which, read without the context, and without consideration of the scope of the agreement, might suggest the creation of a mere agency.

In order to determine, however, what the agreement in question was, it is necessary to consider its substance, to read the whole of it, and not a few of its words.

The right conferred upon Ewing was analogous to that conferred upon the licensee of a patent. The nature of such licensee's right has been very clearly considered by this court recently in the case of St. Paul Plow Works *vs.* Starling, 140 United States, 184.

Ewing was not constituted an agent to sell on behalf of the defendant, for its account, its machines. It was made his duty to purchase for himself, and to pay for, the machines which he desired to sell. The defendant agreed with him that it would furnish to him, to be sold by him, for his own account, within a designated territory, its machines. It further agreed that within said territory he alone should be allowed to sell the same.

It seems too plain for argument that the agreement by the defendant with the plaintiff was one of sale and not of agency. It not only conferred upon the latter the right to sell, but it excluded others from selling.

Was this agreement one of sale only so long as the defendant desired to sell, or one to sell to him without limit of time?

The agreement by Ewing "to purchase from first party "during the year 1875 at least $20,000 net worth of ma- "chines, parts and accessories to be taken in equal monthly "parts and to be paid for as stated herein," was not one which it was competent for the defendant at will to revoke. This agreement, by itself, is sufficient to show that the provision was one, not at will, but for a time, and for a time not terminable with the year 1875.

Inasmuch as the contract was not to be at will, it was to have *some* duration. The least extent which can be given it is for the life of Ewing, or during the continuance in business of the defendant. An agreement to run for *some* time, not limited, cannot be otherwise construed.

It may be well to make several quotations from the contract in confirmation of this contention:—

"The first party hereby appoints, subject to conditions herein- "after expressed, the second party its exclusive vendor for its "sewing-machines, &c." * * * "The second party hereby "accepts said appointment. The first party will sell, for the "present, to second party, its sewing-machines and parts "thereof at sixty per cent. discount from its present New "York retail price-list, &c." * * * "In the event of a "change (the liberty to effect which is not herein intended to "be restricted) in retail prices, or of a general revision of dis- "counts by first party, second party is to be as favorably con- "sidered then in the readjusting and fixing of discount rates to "him as is extended to him on present basis of prices." * * * "The first party will not knowingly supply its goods at a dis- "count to go within the limits of territory hereby assigned." * * * "The established retail prices of first party are to "be maintained for retail trade, and the second party is bound to "sustain them, and will bind all sub-vendors or agents of his to

"sustain said established retail prices." * * * "Machines or "parts, needles or attachments counterfeiting, infringing, or in "any degree trespassing upon ours, nor in any effect trading "upon our name, must not be dealt in, nor countenanced by "second party." * * * "If for any reason, at any time, "the connection hereby formed shall cease, the first party shall "have the right to buy back of its goods sold to second party "all such goods as first party may select; first party to pay "therefor the same price as charged second party." * * *. "Violation of the spirit of this agreement shall be sufficient "cause for its abrogation." * * * "Permission is granted "second party to trade in all former territory occupied by him, "until such time as such party shall form other connections "for occupying the territory not contained nor designated "therein as belonging to second party." * * * "This ap- "pointment or agency is not salable or transferrable by sec- "ond party without obtaining the written consent of first "party, but such consent is to be given, providing the pur- "chaser or other person is acceptable to said first party."

It is impossible to read the foregoing contract without seeing that rights of a very important character were conferred which were meant to be permanent, and to exist for a time not limited.

In Wagner *vs.* Breed, 46 North Western Rep., 286, decided by the Supreme Court of Nebraska, a contract reads thus:—

The party of the second part does hereby constitute and appoint William Breed, one of the parties of the first part, sole and exclusive agent to sell the beer of party of second part in all territory south of the Union Pacific Railroad and west of the cities of Lincoln and Columbus in the State of Nebraska, and said party of the second part hereby promises and agrees that he will not, during the continuance of this contract, sell any beer to any person in said territory other than William Breed; and said party of the second part hereby promises and agrees that he will at all times furnish the said William Breed with all the beer he may require for sale, and the party of the second part agrees to give credit to the said William Breed from time to time to the amount of ($1500) fifteen hundred dollars.

In consideration of the agreements and promises of the party of the second part hereinbefore set out, said party of the first part hereby agrees to faithfully represent party of the second part in the territory above

mentioned, and to act as his agent for the sale of his beer, and at all times use his utmost endeavor to sell the same in the markets of said territory, and he, the said party of the first part, for the purpose of securing to the said party of the second part any indebtedness that is now, or may be hereafter, created by parties of the first part to party of the second part, hereby bargains, sells, and conveys unto the party of the second part, his heirs and assigns, the following-described real estate situate in county of Adams, State of Nebraska, to wit:—

Lot 10, in Block 10, Moore's addition to the town, now city of Hastings This conveyance to be void, however, if the said parties of the first part shall, when the parties to this contract cease to operate thereunder, pay or cause to be paid to party of the second part all debts that may be due him from parties of the first part for beer furnished parties of the first part by parties of the second part.

This contract may be annulled by either party thereto by giving the other party six months' notice in writing.

The court held:—

The contract or paper, whatever it may properly be called, when all its parts and provisions are considered and construed together cannot be held to establish the legal relationship of principal and agent between the plaintiff and the defendant William Breed. Its purpose and object is twofold. First, to establish a trade on credit between the parties; and, second, to provide a security for whatever indebtedness might arise on the part of Breed to the plaintiff out of such trade within the limit specified. * * * The third clause of the instrument, taken alone, would probably be construed to amount to an agreement on the part of Breed to sell beer in the name of the plaintiff, and at his risk of profit or loss; but when considered in connection with the second clause wherein the plaintiff agrees that he will not, during the continuance of said contract, sell beer in said territory to any other party than the said William Breed, and agrees to give credit to said William Breed, from time to time, to the extent of $1500, in supplying him with all the beer he may require for sale, all idea of the legal relationship of principal and agent imposing a liability upon the principal for acts or want of skill, care or diligence of the agent is repelled. The instrument clearly contemplates the sale of beer by the plaintiff to Breed, but it is not a bill of sale or contract of sale.

II. The Contract of 1867 was Properly Admitted in Evidence.

The contract of 1867 was admissible in evidence not only as throwing some light upon the question of the value of the contract broken, but also for the purpose of showing the fact that the agreement of 1874 rested upon a consideration.

The contract of 1874 stated that "All contracts or agree-"ments made prior to the first date written above are hereby "nullified and satisfied."

It was the right of the jury to know that a consideration had been given. It was impossible to correctly understand the relation established by the contract of 1874 without a knowledge of the situation. It was not claimed that the contract of 1867 was admissible to modify, to alter, or to vary that of 1874, but simply to show that the parties had dealt together previously about the same subject-matter, and that the new agreement grew out of such past relation. Though the learned judge did not admit the contract of 1867 for this purpose, we submit that he should have done so.

III. The Value Paid to the Defendant by the Plaintiff for the Exclusive Right to Sell its Sewing-machines in 1867, in Connection with the Oral Testimony, was Pertinent to the Issue Raised as to the Amount of Damages Due the Plaintiff.

In determining this question, we must bear in mind the difficulty which attended the proof of the damages occasioned to the plaintiff by defendant's breach.

It was impossible to prove, with any accuracy, his real loss—the probable profits to be derived from the execution of the contract in future years. The contract was one which had no market value. No one could be called, familiar with it, or with its value, as a fact. Experts, with their opinions, could throw no light upon the matter.

In the year 1867 he had paid to the defendant a certain sum for the exclusive right to sell its machines in Philadelphia and in certain surrounding territory. In 1874 a similar exclusive right was conferred upon him in exchange for the first one, to sell in territory substantially the same, the same machine improved. His former contract conferred upon him the right to sell the machines, not only then in existence, but any which might thereafter be constructed by the defendant.

Two persons were able to testify as to whether or not the

value of the contract of 1867 was different from that of 1874. These persons were plaintiff and defendant. The plaintiff was called and did testify concerning the extent of the difference. The defendant was unable to contradict him, or was unwilling to do so.

The learned judge who tried the cause charged the jury thus:—

> What loss has the plaintiff sustained? What business had he arising from the sale of these machines at the time that the defendants withdrew from the contract? What was the business in these machines which he was then doing worth? As bearing on this question the plaintiff was permitted to show what he paid the defendants when he originally took the business of selling the machines here from them in 1867. How much of the sum then paid, if any part, was paid for the good-will of the business and how much for the machines and other property then transferred, you must judge. He has also produced evidence of what he sold one-half, as he says, of the good-will for subsequently, and what he paid on taking it back. Was the business he lost when the defendants withdrew from this contract similar in amount and value to the business transferred to him in 1867, or possessed by him at the time of the subsequent transaction, when he sold a half of the good-will, and at a later period when he purchased it back? It must be carefully borne in mind that the testimony respecting these former transactions—old transactions, as they may, I think, justly be called to distinguish them—the evidence respecting these transactions was admitted only for the purpose of shedding light upon the value of the business lost in 1879. * * * The injury now to be compensated, and the only injury to be compensated, if he is entitled to recover, is the injury to his business in these machines, not any other business, at the time the defendants abrogated the contract in 1879. This is the business, the value of which you must find if your verdict is for the plaintiff. What was it, I repeat again, worth—that business which he had in 1879? Had it gone down to any extent? How much had it gone down? What business was he then doing in these machines?

The authorities quoted by the plaintiff in error in its argument under this head throw no light upon the question involved. This was not an attempt to compare the value of one property with that of another. It was an attempt to show the damage occasioned to a man by the breach of a contract which had no market value, by showing the considerations paid by him for substantially the same contract to the defendant.